

LIST 2-10-68

TRANSCRIPT OF RECORD

DEPARTMENT OF THE ARMY, UNITED STATES

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IN THE  
**United States Court of Appeals**

FOR THE DISTRICT OF COLUMBIA CIRCUIT.

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No. 10,271

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Filed May 19 1949

DENVER BUILDING AND CONSTRUCTION TRADES COUNCIL; INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, A. F. L. LOCAL 68; AND UNITED ASSOCIATION OF JOURNEYMEN & APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF UNITED STATES AND CANADA, A. F. L. LOCAL # 3, *Petitioners,*

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent.*

---

**Petition for Review Of, and to Set Aside, an Order of the  
National Labor Relations Board.**

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*To the Honorable, the Judges of the United States Court  
of Appeals for the District of Columbia:*

The Denver Building and Construction Trades Council, International Brotherhood of Electrical Workers A. F. of L. Local Union No. 68 and United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, A. F. of L. Local Union



No. 3 (hereinafter referred to as "Petitioners") petition this honorable Court to review and set aside a final order dated April 13, 1949 by the respondent National Labor Relations Board (hereinafter referred to as the "Board") by which they are aggrieved and their interests are adversely affected and respectfully show to the Court as follows:

1. Petitioner Denver Building and Construction Trades Council (A. F. of L.) (hereinafter referred to as the "Council") is a group of affiliated local craft labor organizations in the construction industry engaged in promoting and protecting the interests of its affiliates in Denver, Colorado. Petitioner International Brotherhood of Electrical Workers (A. F. of L.) Local Union No. 68 (hereinafter referred to as IBEW Local Union 68) is a local craft labor A-2 organization located in Denver, Colorado which is affiliated with the Council and is engaged in promoting and protecting the interests of its members who are employed in the construction industry. United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada (A. F. of L.), Local Union No. 3 (hereinafter referred to as United Association Local Union 3) is a local craft labor organization located in Denver, Colorado, which is affiliated with the Council and is engaged in promoting and protecting the interests of its members in the construction industry.

2. The National Labor Relations Board issued a final order and decision on the 13th day of April 1949, a copy of which is annexed hereto and made a part hereof as Exhibit "A", finding that petitioners had committed certain alleged unfair labor practices and ordering petitioners to cease and desist from such practices and to take other affirmative action.

3. The Court has jurisdiction of these proceedings pursuant to the provisions of Section 10(g) of the National Labor Relations Act (49 Stat. 452) as amended by the

Labor-Management Relations Act, 1947, 61 Stat. 146, 29 U. S. C. Sec. 141, et seq. (hereinafter referred to as the "Act").

The nature of the proceeding as to which review is sought is as follows:

1. On March 3, 1948 Earl C. Gould and John C. Preisner of Denver, Colorado, individuals doing business as Gould and Preisner in the electrical contracting industry and in certain small manufacturing operations filed with the Regional Director of the Board for the Seventeenth Region (Kansas City, Missouri) (hereinafter referred to as the "Regional Director") an amended charge which alleged that petitioners and United Brotherhood of Carpenters and Joiners of America, (A. F. of L.) Local Union No. 55 A-3 had engaged in and were engaging in unfair practices within the meaning of Section 8(b) 4(A) of the Act.

2. On the 4th day of March, 1948 the Regional Director on behalf of the Board, petitioned the District Court of the United States for the District of Columbia for an injunction under Section 10(1) of the Labor-Management Relations Act of 1947 restraining petitioners and Carpenters Local Union 55 from engaging in the unfair labor practices alleged in the charges filed by Gould and Preisner pending final adjudication by the Board. This cause is entitled *Sperry v. Denver Building and Construction Trades Council, et al.*, Civil Action No. 2407.

3. Thereafter, the General Counsel of the Board, on behalf of the Board, caused a complaint dated March 12, 1948 and designated Case No. 30-CC-2 to be signed by the Regional Director which alleged that the acts of petitioners and Carpenters Local Union 55, and each of them, constituted unfair labor practices affecting commerce within the meaning of Section 8(b) sub-division 4(A) and Section 2(6) and (7) of the Act.

4. Upon hearing duly held in Civil Action No. 2407 before the United States District Court of Colorado on March

29 and March 30, 1948, the Court dismissed the petition for temporary injunction, on March 31, 1948 on the grounds that the alleged unfair labor practices did not affect commerce within the meaning of the Act, that the placing of Gould and Preisner's name on an unfair list was lawful under Section 8(c) of the Act and that the peaceful picketing involved in this case did not violate the Act.

5. On April 1, 1948 petitioners and Carpenters Local Union 55 filed a joint answer and motion to dismiss setting up several special defenses, admitting in part and denying in part the allegations of the complaint, and denying that they had engaged in any unfair labor practices. The answer and motion to dismiss raised the defenses that the peaceful picketing and use of the unfair list in this A-4 case were informative and non-coercive communications protected by Section 8(c) of the Act and by the First Amendment of the Constitution of the United States, that the activities alleged to be unfair labor practices do not affect commerce within the meaning of the Act, that said activities are protected by the First, Fifth and Thirteenth Amendments to the Constitution, and that the decision of the United States District Court for the District of Colorado in Civil Action No. 2407 constitutes a bar to the proceeding under the principle of *res judicata*.

6. On April 1 and 2, 1948 hearings were held on the complaint at Denver, Colorado by a Trial Examiner of the Board.

7. At the opening of the hearing, petitioners requested a ruling by the Trial Examiner on one of the grounds of their motion to dismiss, namely, that the decision of the United States District Court for Colorado under the doctrine of *res judicata* deprived the Board of jurisdiction to proceed. The Trial Examiner denied the motion to dismiss on the said ground and reserved ruling on the motion to dismiss on the other grounds.

8. On July 13, 1948, the Trial Examiner issued his Intermediate Report, which was filed with the Board, concluding



that Gould and Preisner were engaged in commerce within the meaning of Section 2(6) and (7) of the Act, that petitioners and Carpenters Local Union 55 engaged in unfair labor practices within the meaning of Section 8(b) 4(A) of the Act by engaging in alleged strike action, where an object thereof was to force or require Tony LoSasso, a general contractor, and Doose and Lintner Construction Company, a general contractor, to cease doing business with Gould and Preisner on two jobs known as the Bannock Street project and the LoSasso project and that the petitioners and Carpenters Local Union 55 did not, jointly or severally engage in unfair labor practices within the meaning of Section 8(b) 4(A) of the Act by ordering or inducing any employer of Tony LoSasso other than John Moller, a carpenter, to engage in strike action against LoSasso, by inducing Michael A. Capra, a plumber, A-5 to leave his employment on the Lo Sasso project; or by placing Doose and Lintner Construction Company or Gould and Preisner on an unfair list. The Trial Examiner recommended that petitioners and Carpenters Local Union 55 be ordered to cease and desist from engaging in the unfair labor practices which he found and to take other affirmative action.

9. On May 21, 1948 a duly authorized attorney of the Board filed a notice of appeal to the United States Court of Appeals for the Tenth Circuit, on behalf of the Regional Director, from the order of the United States District Court for Colorado dismissing the petition for temporary injunction filed by the Regional Director in Civil Action No. 2407. On July 1, 1948 the attorney for the Board withdrew said notice of appeal and on August 12, 1948 the General Counsel of the Board filed a stipulation signed by the petitioners and Carpenters Local Union 55 which was approved by the United States District Court for Colorado dismissing the appeal in accordance with Rule 73, Federal Rules of Civil Procedure, as amended.



10. Subsequently, the Board issued its order, transferring this case and continuing it before the Board for initial decision. Thereafter, and pursuant to the rules of the Board petitioners duly served and filed with the Board their exceptions to certain rulings and to the Intermediate Report and Recommended Order of the Trial Examiner, challenging the propriety and legality of the Trial Examiner's rulings, findings and recommendations adverse to the petitioners.

11. Petitioners applied for an oral argument before the Board which the Board granted. Thereafter, a request was made by all of the petitioners for postponement of the original date set for argument which request was denied by the Board, whereupon all of the petitioners waived oral argument and none was held. Two members of the A-6 Board dissented from the denial of the request for postponement of the date for oral argument.

12. On April 13, 1949 the Board issued its findings, decisions and order adopting the Trial Examiner's recommendations except that the Board dismissed the complaint with respect to the Lo Sasso project on the ground that the withdrawal of one man, Moller, did not constitute a strike within the meaning of the Act, and ruled that the Carpenters had not authorized a strike on the Bannock Street job. No cease and desist order was issued, therefore, against Carpenters Local Union 55.

13. The points upon which petitioners intend to rely for relief hereinafter requested are as follows:

(a) The conclusions of law upon which said order is based are not supported by the findings of fact made by the Board and are erroneous, contrary to law and unsupported by substantial evidence on the record considered as a whole.

(b) The order of the Board is arbitrary and capricious and constitutes an abuse of discretion and exceeds the powers vested in the Board.

(c) The order of the Board is beyond the scope of the complaint and requires affirmative action by the petitioners, not warranted by the allegation in the complaint, by the evidence in the record or the findings of fact by the Board, or by law.

Specifically, the Board's order is invalid and erroneous by reason of the following:

1. The Board's findings that Gould and Preisner are engaged in commerce and that the alleged unfair labor practices affected commerce are not supported by substantial evidence on the record considered as a whole, and are not based on a valid interpretation of Section 2(6) and (7) of the Act.

A-7 The Board's application of the Act to the alleged unfair labor practices on the theory that commerce was affected extends the Act improperly beyond the constitutional power of Congress to regulate commerce as specified in Article I, Section 8 of the Constitution of the United States.

3. The Board abused its discretion by failing to decline jurisdiction on the ground that the practices which were the subject of the complaint affected commerce remotely, if at all.

4. The Board's action of adopting the finding of the Trial Examiner that the activities of petitioners have a close, intimate and substantial relation to trade, traffic and commerce among the several States, and tend to lead and have led, to labor disputes burdening and obstructing commerce and the free flow of commerce is not supported by any substantial evidence on the record considered as a whole.

5. The Board erred as a matter of law in finding that Gould and Preisner (the sub-contractor) was "doing business" with Doose and Lintner Construction Company (the general contractor) within the meaning of Section 8(b) 4(a) of the Act and such finding is not supported by any substantial evidence in the record considered as a whole.

6. The Board should have properly found as a matter of law that Gould and Preisner (sub-contractor) were performing as an agent for Doose and Lintner (general contractor) and therefore, petitioners' activities, if any, were against Doose and Lintner only.

7. The Board failed to comply with Section 8(b) of the Administrative Procedure Act in that it did not include reasons in its decision in support of its findings on the material issue of whether petitioners had caused A-8 employees to quit work on the Bannock Street project with an object of forcing Doose and Lintner "to cease doing business" with Gould and Preisner.

8. There is no substantial evidence in the record considered as a whole to support the finding that any of the petitioners or the petitioners jointly engaged in an unfair labor practice within the meaning of Section 8(b) 4(A) of the Act in connection with Doose and Lintner's construction work on the Bannock Street job.

9. The Board erred in adopting the Trial Examiner's finding that petitioners "jointly and severally engaged in strike action violative of Section 8(b) 4(A) of the Act" in connection with Doose and Lintner's Bannock Street project. Such finding is not supported by any substantial evidence in the record as a whole and is an invalid interpretation of Sections 8(b) 4(A) and 8(c) of the Act.

10. The Board erred in failing to grant petitioners' motion to dismiss the complaint on the ground that the action of the United States District Court for Colorado in dismissing the Board's petition under Section 10(1) for temporary injunction in Civil Action No. 2407 constituted *res judicata* on the issue of whether the alleged unfair labor practices affected commerce.

11. The Board erred in failing to find that the stipulation filed in the United States District Court for Colorado dismissing the Board's appeal in the case of *Sperry v. Denver Building and Construction Trades Council et al.*, Civil Action No. 2407 rendered the whole proceeding *res*



*judicata* and was in fact a final judgment binding upon the Board.

12. The Board's order, if enforced, will deprive petitioners and the individual members of their unions of their constitutional rights to (a) freedom of speech and expression granted by the First Amendment to the Constitution of the United States; (b) The right of voluntary organization which derives from the rights of free speech and freedom of assembly guaranteed by the First Amendment, and the liberty guaranteed by the Fifth Amendment to the Constitution of the United States and (c) the right of freedom from involuntary servitude guaranteed by the Thirteenth Amendment to the Constitution of the United States.

13. Section 8(b) 4(A) of the Act as it is applied by the Board in the instant case is repugnant to and violates the First, Fifth and Thirteenth Amendments of the Constitution of the United States.

14. The Board erred in failing to grant the motion of petitioners for dismissal of the complaint.

15. The Board erred in rejecting petitioners' proposed findings and conclusions as shown in the record which findings were supported by substantial evidence.

16. The Board erred in allowing Gould & Preisner to participate in the proceedings before the Board contrary to the provisions of Section 10(b) of the Act and of Section 203.29 of the Board's Rules and Regulations.

17. The Board erred in finding that Exhibits 2, 3, 6, 6A, 7, 8 and 8A of the Board were admissible contrary to Section 10(b) of the Act.

18. It was erroneous for the Board to find that it was proper for the Trial Examiner to permit counsel for Gould and Preisner (the subcontractor) to cross-examine the witness Louis Lintner (the general contractor), and that section was opposed to the Rules of Evidence and the Rules of Civil Procedure.



19. It was erroneous for the Board to find that the testimony of John Preisner, (the subcontractor), in regard to a conversation he had with Louis Lintner, the general contractor, out of the presence of petitioners or any A-10 of their agents, was proper and such testimony was opposed to the Rules of Evidence and Rules of Civil Procedure.

20. The Board erred in its issuance of a blanket form of order which is not consistent with the provisions of the Act, and which is not supported by requisite findings and any substantial evidence in the record considered as a whole.

In addition to the points specifically set forth hereinbefore the failure of the Board to recognize, approve and grant the various exceptions set forth in "respondents" statement of exceptions to certain rulings of the Trial Examiner and Intermediate Report and Recommended Order filed with the Board, a copy of which exceptions will be part of the transcript of the record to be filed herein is erroneous and contrary to law.

WHEREFORE, petitioners pray:

1. That a certified copy hereof be forthwith served according to law upon the respondent, National Labor Relations Board, and that the respondent, National Labor Relations Board, be required in conformity with law to certify to the Court a transcript of the record of the proceedings wherein said order was entered, including the testimony, evidence and exhibits taken the pleadings, the Intermediate Report of the Trial Examiner and the Exceptions taken thereto, and the findings, conclusions, opinion and order of the said National Labor Relations Board.

2. That said proceedings, findings, conclusions and order be reviewed by this Court and said order be set aside, vacated and annulled in its entirety and the Board be ordered to dismiss the complaint against petitioners.

3. That this Court exercise its jurisdiction and grant to petitioners such other and further relief in the premises

as the rights and equities of the cause may require and to the Court may seem just and proper.

A-11

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tices of the Plumbing and  
Pipe Fitting Industry of  
the U. S. and Canada,  
Local 498

A-13

Filed June 28 1949

**Answer of National Labor Relations Board to Petition for Review Of, and to Set Aside, Its Order and Request for Enforcement of Said Order.**

*To the Honorable, the Judges of the United States Court of Appeals for the District of Columbia:*

Comes now, the National Labor Relations Board, herein called the Board, and pursuant to the National Labor Relations Act, as amended, (61 Stat. 136, 29 U. S. C. Supp. I, Secs. 151, *et seq.*) hereinafter called the Act, files this answer to the Petition for Review of, and to Set Aside, an Order issued by the Board against Denver Building and Construction Trades Council; International Brotherhood of Electrical Workers, A. F. L. Local 68; and United Association of Journeymen & Apprentices of the Plumbing and Pipe Fitting Industry of United States and Canada, A. F. L. Local #3, Petitioners herein, and the Board's request for enforcement of said order.

I. Moves to dismiss the Petition insofar as it is filed on behalf of Building Trades Department, American Federation of Labor, on the ground that said Building Trades Department is not a party aggrieved by the Order A-14 issued by the Board, as required by Section 10(f) of the National Labor Relations Act, as amended.

II. Further answering the said Petition

(1) Admits the allegations contained in paragraphs numbered 2, and 3, on page 2 of the Petition.

(2) Answering the allegations contained in paragraphs numbered 1 on page 1 and paragraphs numbered 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, on pages 2, 3, 4, 5, and 6 of the Petition, the Board prays reference to the certified transcript of record for a full and exact statement of the proceedings heretofore had herein, for a full and exact statement of the pleadings, evidence, findings of fact, conclusions of law



and order of the Board, and all other proceedings had in this matter.

(3) Admits the allegations in paragraph numbered 9 on page 5 of the Petition.

(4) Denies each and every allegation of error contained in paragraphs numbered 13 subparagraphs (a) to (c) inclusive, and paragraphs 1 to 20 inclusive on pages 6 to 10 inclusive of the Petition.

(5) Avers that the proceedings had before it, the findings of fact, conclusions of law, and order of the Board were and are in all respects valid and proper under the Act.

(6) Pursuant to Section 10 (f) of the Act, the Board respectfully requests this Honorable Court for enforcement of its order issued against Petitioners on April 13, 1949, in the proceedings designated on the records of the Board as Case No. 30-CC-2, entitled: "*In the Matter of Denver Building and Construction Trades Council: United Brotherhood of Carpenters and Joiners of America, AFL, Local 55 International Brotherhood of Electrical Workers of America, AFL, Local 68; United Association of Journey-men Pipe Fitters and Apprentices of The Plumbing and Pipefitting Industry of the United States and Canada, AFL, Local 3; and Earl C. Gould and John C. Preisner, d/b/a Gould & Preisner.*"

In support of this request for enforcement of its order, the Board respectfully shows:

A-15 (a) Petitioners Denver Building and Construction Trades Council; International Brotherhood of Electrical Workers, A. F. L. Local 68; and United Association of Journeymen & Apprentices of the Plumbing and Pipe Fitting Industry of United States and Canada, A. F. L. Local #3, are labor organizations within the meaning of Section 2 (5) of the Act. This Court has jurisdiction of the Petition for Review herein, and of this request for enforcement of the Board's order by virtue of Section 10 (f) of the Act.



(b) Upon proceedings had in said matter, as more fully shown by the entire record thereof certified by the Board and filed with this Court herein, to which reference is hereby made, and including complaint, answer, hearing for the purpose of taking testimony and receiving other evidence, Trial Examiner's report and exceptions thereto, the Board on April 13, 1949, duly stated its findings of fact and conclusions of law and issued its order directed to Petitioners Denver Building and Construction Trades Council; International Brotherhood of Electrical Workers, A. F. L. Local 68; and United Association of Journeymen & Apprentices of the Plumbing and Pipe Fitting Industry of United States and Canada, A. F. L. Local #3. The aforesaid order provides as follows:

### ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondents, Denver Building and Construction Trades Council, International Brotherhood of Electrical Workers of America, AFL, Local 68, and United Association of Journeymen Pipe Fitters and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL, Local 3, and their agents, shall:

1. Cease and desist from engaging in, or inducing or encouraging the employees of Doose & Lintner or any other employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services, where an object thereof is to force or require Doose & Lintner Construction Company or any other employer or other person to cease doing business with Gould & Preisner.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

A-16 (a) Post at their respective Denver, Colorado, business office copies of the notice attached hereto as an

**Appendix.** Copies of said notice, to be furnished by the Regional Director for the Seventeenth Region, shall, after being duly signed by a representative of each Respondent, be posted by said Respondent immediately upon receipt thereof and maintained for a period of sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by said Respondents to insure that the notices are not altered, defaced, or covered by any other material;

(b) Notify the Regional Director for the Seventeenth Region in writing, within ten (10) days from the date of This order, what steps the Respondents have taken to comply herewith.

(c) On 13th day of April, 1949 the Board's Order and Decision were duly served upon the Petitioners.

(d) Pursuant to Section 10 (f) of the Act, the Board has certified and filed with this Court a transcript of the entire record in the proceedings.

**WHEREFORE**, the Board prays this Honorable Court that it cause notice of the filing of this answer and request for enforcement, and the filing of the certified transcript of the entire record in this proceeding, to be served upon Petitioners, and that this Court take jurisdiction of the proceedings and of the questions to be determined therein, and make and enter upon the pleadings, evidence, and proceedings set forth in the entire certified record of said proceedings, and upon the order set forth hereinabove, a decree denying the Petition and enforcing in whole said order of the Board, and requiring the Petitioners Denver Building and Construction Trades Council; International Brotherhood of Electrical Workers, A. F. L. Local 68; and United Association of Journeymen & Apprentices of the Plumbing and Pipe Fitting Industry of United States and Canada, A. F. L. Local No. 3 to comply therewith. The Board further prays that this Honorable Court in enforcing said order, shall provide that the aforementioned notice to be posted by Pe-

tioners marked "Appendix" shall specifically recite that the Board's order has been enforced by decree as follows: "Appendix, Notice to all Employees, Pursuant to a Decision and Order of the National Labor Relations A-17 Board, as enforced by a decree of the United States Court of Appeals, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

Dated at Washington, D. C.  
this 28th day of June 1949.

/s/ A. NORMAN SOEERS,  
*Assistant General Counsel,*  
NATIONAL LABOR RELATIONS BOARD.

A-18

## APPENDIX

### NOTICE

To all Members of Denver Building and Construction Trades Council; International Brotherhood of Electrical Workers of America, AFL, Local 68; and United Association of Journeymen Pipe Fitters and Apprentices of the Plumbing and Pipe-fitting Industry of the United States and Canada, AFL, Local 3.

### PURSUANT TO

### A DECISION AND ORDER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our members that:

WE WILL NOT engage in, or induce or encourage the employees of Doose & Lintner or any other employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services, where an object thereof is to force



or require Doose & Lintner Construction Company or any other employer or other person to cease doing business with Gould & Preisner.

Denver Building and Construction Trades Council

By .....

*Title of Officer*

International Brotherhood of Electrical Workers  
of America, AFL, Local 68

By .....

*Title of Officer*

United Association of Journeymen Pipe Fitters  
and Apprentices of the Plumbing and Pipefitting  
Industry of the United States and Canada, AFL,  
Local 3

By .....

*Title of Officer*

Dated.....

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

A-19 DISTRICT OF COLUMBIA, SS:

A. Norman Somers, being first duly sworn, states that he is Assistant General Counsel of the National Labor Relations Board, respondent and petitioner herein, and that he is authorized to and does make this verification in behalf of said Board; that he has read the foregoing answer and petition for enforcement and has knowledge of the contents

thereof; and that the statements therein are true to the best of his knowledge, information and belief.

/s/ A. NORMAN SOMERS,  
Assistant General Counsel.

Subscribed and sworn to before me this 28th days of June 1949.

(SEAL) ROSE MARY FILIPOWICZ,  
Notary Public,  
District of Columbia.

My Commission expires March 15, 1953.

(SEAL)

**Proceedings Before the National Labor Relations Board.**

257

**UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD**

**Amended Charge Against Labor Organization or Its Agents.**

1. Pursuant to Section 10(b) of the National Labor Relations Act, the undersigned hereby charges that Denver Building and Construction Trades Council, United Brotherhood of Carpenters and Joiners of America, AFL, Local 55; International Brotherhood of Electrical Workers of America, AFL, Local 68; and United Association of Journeymen, Pipe Fitters and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL, Local 3, at Denver, Colorado, have engaged in and are engaging in unfair labor practices within the meaning of Section 8(b) subsections 4(a) of said Act, in that:

2. On or about January 8, 1948, and thereafter, said Denver Building and Construction Trades Council advised William L. Doose and Louis F. Lintner, co-partners doing business as Doose and Lintner Construction Company, that if they continued to use the services of Earl C. Gould and John C. Preisner, co-partners doing business as Gould & Preisner, on a commercial structure being erected at 1068 So. Bannock Street, Denver, Colorado, they would be picketed by said Denver Building and Construction Trades

Council on behalf of its constituent unions, some of whose members were engaged on that job.

3. On or about January 9, 1948, and thereafter, said Denver Building and Construction Trades Council, through its agents, picketed said commercial structure at 1068 So. Bannock Street with a placard reading substantially as follows: "This Job Unfair to Denver Building and Construction Trades Council."

4. On or about January 8, 1948, said Denver Building and Construction Trades Council placed Doose & Lintner Construction Company and Gould & Preisner on an "Unfair List" and advised its constituent unions of that fact.

5. On or about November 1, 1947, and again on or about November 7, 1947, said Denver Building and Construction Trades Council and United Brotherhood of Carpenters and Joiners of America, AFL, Local #55, through their agents, induced and encouraged Employee John Moller, a member of United Brotherhood of Carpenters and Joiners of America, AFL, and other employees, by orders, threats and/or promises of benefits, to leave the employ of Tony LoSasso, doing business as Tony LoSasso, Contractor.

6. On or about November 1, 1947, said Denver Building and Construction Trades Council and United Association of Journeymen, Pipe Fitters and Apprentices of Plumbing and Pipe Fitting Industry of the United States and Canada, AFL, Local 3, through their agents, induced and encouraged Michael A. Capra, a member of United Association of Journeymen, Pipe Fitters and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL, Local 3, and an employee of Louis Cook Plumbing Company, an independent sub-contractor, by orders, threats and/or promises of benefits, to leave his employment.

7. By the acts set out in paragraphs 2, 3, 4, 5 and 6 above, said Denver Building and Construction Trades Council, United Brotherhood of Carpenters and Joiners of America, AFL, Local #55, and United Association of Journeymen, Pipe Fitters and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL,



Local 3, have induced and encouraged, and are inducing and encouraging employees of Doose & Lintner, Tony LoSasso and other employers or persons, by orders, threats and/or promises of benefits, to engage in a concerted refusal in the course of their employment to perform services, an object thereof being to force or require said Doose & Lintner and Tony LoSasso to cease doing business with Gould & Preisner.

258 3. Name of Employer: Earl C. Gould and John C. Preisner, doing business as Gould & Preisner.

4. Location of plant involved: 1068 So. Bannock Street, 2001, 2005, 2015 W. 45th Ave., Denver, Colo., employing 30.

5. Nature of business: Electrical contracting and the manufacturing and retailing of electrical fittings and devices.

6. (Paragraphs 6, 7, and 8 apply only if the charge is filed by a labor organization) The labor organization filing this charge, hereinafter called the union, has complied with Section 9(f) (A), 9(f) (B) (1), and 9(g) of said Act as amended, as evidenced by letter of compliance issued by the Department of Labor and bearing code number..... The financial data filed with the Secretary of Labor is for the fiscal year ending..... A Certificate has been filed with the National Labor Relations Board in accordance with Section 9(f) (B) (2) stating the method employed by the union in furnishing to all its members copies of the financial data required to be filed with the Secretary of Labor.

7. Each of the officers of the union has executed a non-communist affidavit as required by Section 9(h) of the Act.

8. Upon information and belief, the national or international labor organization of which this organization is an affiliate or constituent unit has also complied with Section 9(f), (g), and (h) of the Act.

Full name of party filing charge: Earl C. Gould and John C. Preisner, doing business as Gould & Preisner.

Address—Street, City, State: 1298 So. Kalamath Street, Denver, Colorado.

Telephone number: PEarl 2431.

Signature of representative or person filing charge, title or office, if any:

JOHN C. PREISNER,  
*Partner.*

Case No. 30-CC-2.

Date filed, March 3, 1948.

Subscribed and sworn to before me this 3rd day of March 1948, at Denver, Colorado, as true to the best of deponent's knowledge, information and belief.

HOWARD W. KLEEB,  
*(Board Agent or Notary Public).*

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UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
SEVENTEENTH REGION

Case No. 30-CC-2.

In the Matter of

DENVER BUILDING AND CONSTRUCTION TRADES COUNCIL;  
UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF  
AMERICA, A.F.L., LOCAL 55; INTERNATIONAL BROTHER-  
HOOD OF ELECTRICAL WORKERS OF AMERICA, A.F.L., LOCAL  
68; AND UNITED ASSOCIATION OF JOURNEYMEN, PIPE FIT-  
TERS, AND APPRENTICES OF THE PLUMBING AND PIPE  
FITTING INDUSTRY OF THE UNITED STATES AND CANADA,  
A.F.L., LOCAL 3,

and

EARL C. GOULD and JOHN C. PREISNER,  
doing business as Gould & Preisner.

**Complaint.**

It having been charged by Earl C. Gould and John C. Preisner, doing business as Gould & Preisner, hereinafter

referred to as Gould & Preisner, that Denver Building and Construction Trades Council; United Brotherhood of Carpenters and Joiners of America, A.F.L., Local 55; International Brotherhood of Electrical Workers of America, A.F.L., Local 68; and United Association of Journeymen, Pipe Fitters and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, A.F.L., Local 3, have engaged in, and are now engaging in certain unfair labor practices affecting commerce, as set forth and defined in the National Labor Relations Act, 49 Stat. 449, as amended by the Labor-Management Relations Act of 1947, Public Law 101, 80th Congress, hereinafter referred to as the "Act." The Regional Director for the 17th Region of the National Labor Relations Board, hereinafter referred to as "the Board," in the name of the Board, as set forth by the Board's Rules and Regulations, Series 5, Section 203.15, hereby issues his complaint and alleges, as follows:

260      1. United Brotherhood of Carpenters and Joiners of America, A.F.L., Local 55; International Brotherhood of Electrical Workers of America, A.F.L., Local 68; and the United Association of Journeymen, Pipe Fitters and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, A.F.L., Local 3; are labor organizations within the meaning of Section 2 (5) of the Act.

2. Denver Building and Construction Trades Council, hereinafter referred to as the "Building Trades Council," is a labor organization within the meaning of Section 2 (5) of the Act. The Building Trades Council is an association composed of the unions described in paragraph 1 above and others and is engaged in protecting the interests of its constituent unions and their members.

3. Earl C. Gould and John C. Preisner are individuals doing business as Gould & Preisner, and are engaged in electrical contracting and the manufacturing and retailing of electrical fittings and devices, with their principal office and place of business in Denver, Colorado. In the opera-



tion of said business they purchased raw materials during the year 1947 valued at in excess of Fifty Thousand (\$50,000.00) Dollars, of which approximately 90% originated at points outside the State of Colorado. During the same period they sold finished products and performed services valued at in excess of One Hundred Thousand (\$100,000.00) Dollars, approximately 7% of which sales and services were made or performed to or for persons or at places located outside the State of Colorado.

4. William L. Doose and Louis F. Lintner are individuals doing business as Doose & Lintner Construction Company, hereinafter referred to as "Doose & Lintner," and are engaged in the general contracting business with their principal offices in Denver, Colorado.

5. Tony LoSasso, an individual doing business as Tony LoSasso, Contractor, hereinafter referred to as "LoSasso," is engaged as a builder and general contractor of 261 residential structures with his principal office and place of business in Denver, Colorado.

6. On or about September 25, 1947, Gould & Preisner entered into arrangements with Doose & Lintner to perform certain electrical work, including the furnishing of materials, upon a structure being erected by Doose & Lintner at 1068 Bannock Street, Denver, Colorado. Pursuant to said arrangements, Gould & Preisner began performance of said work on or about October 21, 1947. Doose & Lintner, while engaged in erecting the building at 1068 Bannock Street, entered into arrangements with other independent sub-contractors to perform essential work.

7. On or about January 8, 1948, and at various times thereafter, respondents Building Trades Council, International Brotherhood of Electrical Workers of America, A.F.L., Local 68 and the United Association of Journeymen, Pipe Fitters and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, A.F.L., Local 3, through their officers and agents, advised Doose & Lintner if Doose & Lintner continued to utilize

the services of Gould & Preisner for completing the electrical work, as set forth in paragraph 5 above, Doose & Lintner would be picketed by the Building Trades Council on behalf of its constituent unions, some of whose members were engaged in erecting the aforesaid building.

8. On or about January 9, 1948, and thereafter, respondent Building Trades Council picketed the construction site on Bannock Street with a placard reading substantially as follows: "This Job Unfair to Denver Building and Construction Trades Council," because Doose & Lintner refused to submit to the aforesaid demand that Doose & Lintner cease doing business with Gould & Preisner, and because Doose & Lintner continued to use the services of Gould & Preisner.

9. On or about January 8, 1948, respondent Building Trades Council placed Doose & Lintner and Gould & Preisner on an "unfair list" which list was located on a 262 blackboard at the offices of the Building Trades Council located at 832 West 6th Avenue, Denver, Colorado. Respondent Building Trades Council advised its constituent unions of that fact. Doose & Lintner and Gould & Preisner were placed on said unfair list by respondent Building Trades Council because Doose & Lintner continued to use the services of Gould & Preisner and refused to submit to the aforesaid demand that Doose & Lintner cease doing business with Gould & Preisner.

10. On or about October 23, 1947, Gould & Preisner entered into arrangements with LoSasso to perform certain electrical work, including the furnishing of materials, upon certain residential structures being erected by LoSasso at 2001, 2005 and 2015 West 45th Avenue, Denver, Colorado. Pursuant to such arrangements Gould & Preisner began performance of said work on or about November 1, 1947. In the course of his building operations upon the aforesaid residential structures, LoSasso entered into arrangements with various independent sub-contractors and employees for the performance of said work.

11. On or about November 1, 1947, and on or about November 7, 1947, respondents Building Trades Council and United Brotherhood of Carpenters and Joiners of America, A.F.L., Local No. 55, through their officers and agents, induced and encouraged employee John Moller, a member of United Brotherhood of Carpenters and Joiners of America, A.F.L., and other employees, by orders, threats and/or promises of benefits, to leave the employee of LoSasso, an object thereof being to compel LoSasso to cease doing business with Gould & Preisner.

12. On or about November 1, 1947, respondents Building Trades Council and United Association of Journeymen, Pipe Fitters and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, A.F.L., Local 3, through their officers and agents, induced or encouraged, by threats of force or reprisal and/or promises of benefit, Michael A. Capra, a member of United

263 Association of Journeymen, Pipe Fitters and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, A.F.L., Local 3, said individual being an employee of Louis Cook Plumbing Company, an independent sub-contractor performing services for LoSasso, to leave his employment at the 45th Avenue Construction site because LoSasso continued to use the services of Gould & Preisner and refused to submit to respondents Building Trades Council's and United Association of Journeymen, Pipe Fitters and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, A.F.L., Local 3's demand that LoSasso cease doing business with Gould and Preisner.

13. By the acts described above in paragraphs 7, 8, 9, 10, 11, and 12, respondent Building Trades Council, United Brotherhood of Carpenters and Joiners of America, A.F.L., Local 66; International Brotherhood of Electrical Workers of America, A.F.L., Local 68; and United Association of Journeymen, Pipe Fitters, and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and



Canada, A.F.L., Local 3, jointly and severally have engaged in, and are engaging in unfair labor practices within the meaning of Section 8 (b), subsection (4) (A) of the Act,

14. The activities of the Building Trades Council, United Brotherhood of Carpenters and Joiners of America, A.F.L., Local 55; International Brotherhood of Electrical Workers of America, A.F.L., Local 68; and United Association of Journeymen, Pipe Fitters and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, A.F.L., Local 3, and each of them, as described above in paragraphs 7, 8, 9, 10, 11, and 12 have close intimate and substantial relation to trade, traffic and commerce among the several states and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

15. The acts of the Building Trades Council, United Brotherhood of Carpenters and Joiners of America, A.F.L., Local 55; International Brotherhood of Electrical Workers of America, A.F.L., Local 68; and United Association  
264 tion of Journeymen, Pipe Fitters and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, A.F.L., Local 3, and each of them, constitute unfair labor practices affecting commerce within the meaning of Section 8 (b), subdivision (4) (A) and Section 2 (6) and (7) of the Act.

IN WITNESS WHEREOF, the General Counsel of the National Labor Relations Board, on behalf of the Board, has caused this complaint to be signed by the Regional Director for the 17th Region on this 12th day of March, 1948.

HUGH E. SPERRY, *Regional Director*  
National Labor Relations Board  
300 Temple Building  
900 Grand Avenue  
Kansas City 6, Missouri

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**Answer and Motion to Dismiss.**

Come now the respondents by their respective attorneys and for their answer and defense herein state:

**FIRST DEFENSE.**

Respondents and each of them move for a dismissal of the complaint filed herein on the ground that the unfair labor practices alleged herein do not affect commerce within the meaning of the Labor Management Relations Act of 1947, hereinafter referred to as the Act.

**SECOND DEFENSE.**

For a second and further defense herein, respondents move that the complaint herein be dismissed and as grounds therefor show:

That any order or decree against respondents issued pursuant to a finding that they have engaged in unfair labor practices as alleged in the complaint would deny to respondents their constitutional right of freedom of speech and freedom of assembly guaranteed to them by 300 the First Amendment to the Constitution, and would deny to them the right of liberty and freedom of voluntary organization which they enjoy under the Fifth Amendment to the Constitution of the United States, and would enforce upon their members, involuntary servitude in violation of the Thirteenth Amendment to the Constitution of the United States.

**THIRD AND FURTHER DEFENSE.**

For a third and further defense herein, respondents move that the complaint be dismissed and as grounds therefor show:

1. That the complaint is based solely upon the Act, which said Act as sought to be applied herein is unconstitutional, null, and void in that

(a) Section 8(b)(4) of the Act is repugnant to and violative of the First Amendment of the Constitution of the United States because as sought to be applied in this case, it deprives respondents and their members of the right of freedom of speech guaranteed by the First Amendment;

(b) Section 8(b)(4) of the Act as sought to be applied herein, is repugnant to and violative of the Fifth Amendment to the Constitution of the United States in that it deprives respondents of their liberty to form voluntary organizations for the purpose of bargaining as to the terms and conditions of their employment; and in that it deprives respondents of property without due process of law, said property consisting of contract rights which existed prior to and at the time of the enactment of the Act and which gave to the members of respondent unions rights of employment with contractors and sub-contractors in the City of Denver, Colorado and surrounding territory; and

(c) Section 8(b)(4) of the Act as sought to be applied herein is repugnant to and violative of the  
 301 Thirteenth Amendment to the Constitution of the United States in that it compels involuntary servitude contrary to the provisions of said amendment.

#### FOURTH AND FURTHER DEFENSE.

For a fourth and further defense herein, respondents move that the complaint be dismissed on the ground that in an action heretofore heard by the United States District Court for the District of Colorado, Civil Action No. 2407, between the Regional Director for this Board and the respondents herein, it was on March 30, 1948, adjudged and decreed that the activities herein complained of do not "affect commerce" within the meaning of the Act, and that the conduct of the respondents herein complained of does not constitute an unfair labor practice within the



meaning of the Act; said decision constitutes a bar to this proceeding under the principle of res judicata.

#### FIFTH AND FURTHER DEFENSE.

For a fifth and further defense herein, respondents state:

1. Admit the allegations of paragraph 1.
2. Admit the allegations of paragraph 2.
3. Admit that Gould and Preisner are engaged in the electrical contracting business and in the manufacture and retailing of electrical fittings and devices at Denver, Colorado. Respondents have not sufficient knowledge or information on which to base a belief as to the truth of the remaining allegations of paragraph 3.

4. Admit the allegations of paragraph 4.
5. Admit the allegations of paragraph 5.
6. Admit the allegations of paragraph 6.
7. Respondents deny the allegations of paragraph 7. Respondents state that the respondent Building Trades Council through its agent did advise Doose and Lintner that a picket would be placed on the Bannock street project. That the purpose of said picket was to inform the members of the constituent unions of the respondent Building Trades Council that non-union workers were being employed on the job.

8. Respondents admit that on or about January 9, 1948, respondent Denver Building Trades Council did cause one picket to be placed on the Bannock Street construction site with a placard reading substantially "This job unfair to Denver Building and Construction Trades Council." Respondents state that the said picket was at all times peaceful and was on the public sidewalk adjoining said construction site.

Respondents further state that the purpose of said picket was to inform the members of the constituent unions of the

Denver Building Trades Council that non-union men were being employed upon the job, and state that the said communication of information to the members of such unions was without threat of reprisal or force or promise of benefit and was within the guarantee of free speech of section 8(c) of the Act and of the First Amendment to the Constitution of the United States.

9. Respondents deny that the names of Doose and Lintner were ever placed on a blackboard at its offices or on any other unfair list of respondent unions. Respondents state that the names of Gould and Preisner had for many months prior to this dispute been placed on the unfair list of respondent unions for the reason that Gould and Preisner did not observe union standards or working conditions in their business. Respondents deny the other allegations of paragraph 6(g) and respondents state further that at all times mentioned herein members of respondent unions and affiliated unions were employed by and working for Doose and Lintner at various construction jobs in the City of Denver.

Respondents further allege that on or about January 15, 1948, the said Gould and Preisner supplied a large group of their employees with iron pipe and other implements to be used for the purpose of threatening personal injury to members of respondent unions who were employed on the

Bannock Street job. That said employees under the direction of Gould and Preisner did threaten bodily injury to members of respondent unions employed on the Bannock Street job, and said members through fear of such threats were forced to leave their jobs.

10. Admit the allegations of paragraph 10.

11. Respondents deny the allegations of paragraph 11 of the Complaint and allege that on or about November 1, 1947 and November 7, 1947, an agent of the United Brotherhood of Carpenters and Joiners of America, A.F.L., Local

No. 55, informed an employee of LoSasso, to-wit, John Moller, a member of said union, that non-union employees were working for the said LoSasso and allege that said statement made to the said John Moller was not accompanied by any order, threat, or promise of benefit, but was communicated to the said John Moller in the exercise of the right of free speech recognized by Section 8(c) of the Act and guaranteed by the First Amendment to the Constitution of the United States. Respondents admit that the said John Moller thereafter left the employ of the said LoSasso and allege that in so doing said employee was exercising the rights recognized in section 502 of the Act and guaranteed by the Thirteenth Amendment to the Constitution of the United States.

12. Respondents deny the allegations of paragraph 12 and state that if the said Capra did leave his employment he did it voluntarily without any threat of reprisal or force or promise of benefit, and that he was acting within his rights guaranteed by section 502 of the Act, and the Thirteenth Amendment to the Constitution of the United States.

13. Respondents deny the allegations of paragraph 13.

14. Respondents deny the allegations of paragraph 14.

15. Respondents deny the allegations of paragraph 15.

16. Respondents state that the construction job heretofore mentioned have either been completed or are in the process of being completed without any disruption or cessation of work, or threat of disruption; that there is no obstruction to the flow of interstate commerce; nor threat of obstruction to the flow of interstate commerce, nor  
 304 any dispute leading or tending to lead to a burdening or obstructing of commerce or the free flow of commerce, that respondents are not committing and do not threaten to commit or contemplate committing any unfair labor practice within the meaning of the Act.



17. Respondents deny each and every allegation not herein specifically admitted.

WHEREFORE, respondents and each thereof, pray for a dismissal of said complaint, and for judgment herein.

Address of Respondents:  
832 West 6th Avenue,  
Denver, Colorado.

PHILIP HORNBEIN,  
PHILIP HORNBEIN, JR.,  
Attorneys for Respondents, Denver Building and Construction Trades Council, and United Association of Journeymen Pipe Fitters and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, A.F.L., Local 3,  
620 Symes Building,  
Denver, Colorado.

WAYNE C. WILLIAMS,  
WAYNE D. WILLIAMS,  
Attorneys for Respondents, United Brotherhood of Carpenters and Joiners of America, A.F.L., Local 55,  
926 First National Bank Bldg.,  
Denver, Colorado.

CHARLES T. MAHONEY,  
Attorney for Respondent, International Brotherhood of Electrical Workers of America, A. F. L., Local 68,  
405 Symes Building,  
Denver, Colorado.

305 *State of Colorado,  
City and County of Denver, ss.*

CLIFFORD G. GOULD, PAUL JOHNSON, CLYDE WILLIAMS and MICHAEL P. McDONOUGH, of lawful age, upon their oaths depose and say:

That they are the business managers of respondent unions. That they have read the foregoing Answer and Motion to Dismiss, know the contents thereof, and that the same is true of their own knowledge.

CLIFFORD G. GOULD,  
Business Manager of the Denver Building and Construction Trades Council.

PAUL J. JOHNSON,  
Business Manager of the United Brotherhood of Carpenters and Joiners of America, A.F.L., Local 55.

CLYDE WILLIAMS,  
Business Manager of the International Brotherhood of Electrical Workers of America, A.F.L., Local 68.

MICHAEL P. McDONOUGH,  
Business Manager of the United Association of Journeymen, Pipe Fitters, and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, A.F.L., Local 3.

Subscribed and sworn to before me this 31st day of March, 1948.

My commission expires: August 13, 1951.

NELLIE EMERSON,  
Notary Public.

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**Bill of Particulars and Order.**

Respondents, through their attorneys, having requested a Bill of Particulars, and the undersigned having considered same,

Now, THEREFORE, the undersigned issues the following Bill of Particulars:

1. The particular officers and agents who advised Doose and Lintner that they would picket as alleged in paragraph 7 were Clifford Gould, Jack Fisher, and M. P. McDonough.

2. The particular officer and agent who induced and encouraged John Moller and other employees to leave the employ of LoSasso as alleged in paragraph 11, was Paul Johnson.

3. The orders alleged in paragraph 11 were specific directions and instructions to cease working.

4. The threats alleged in paragraph 11 were oral statements that said employees would be fined, expelled, or otherwise punished by the Union to which they belonged for failure to obey.

5. The particular employee, other than John Moller, who was induced and encouraged to leave his employment, as alleged in paragraph 11, was an employee known as Blacky Stephen.

290 6. The particular officer and agent who induced or encouraged Michael A. Capra to leave his employment, as alleged in paragraph 12, was M. P. McDonough.

The undersigned having considered paragraphs 5, 8, 9, 10, 11, and 12 hereby denies the Motion For a Bill of Particulars as requested in the aforesaid paragraphs, without prejudice to the respondents' right to renew said request before the Trial Examiner.

Dated at Kansas City, Missouri, this 23rd day of March, 1948.

HUGH E. SPERRY, *Regional Director*  
National Labor Relations Board.



## **Transcript of Hearing Before Trial Examiner.**

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U. S. Post Office Building,  
Eighteenth and Stout Streets,  
Denver, Colorado,  
Thursday, April 1, 1948.

Pursuant to notice, the above-entitled matter came on for hearing at 10:00 a.m.

Before:

**EARL S. BELLMAN, Trial Examiner.**

**Appearances:**

**ROBERT S. FOUSEK, Chief Law Officer, National Labor Relations Board, 300 Temple Building, 903 Grand Avenue, Kansas City 6, Mo., appearing for National Labor Relations Board.**

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**JAMES K. SULLIVAN, Attorney, National Labor Relations Board, 516 Continental Oil Building, Denver, Colorado, appearing for National Labor Relations Board.**

**WAYNE D. WILLIAMS, Attorney, 926 First National Bank Building, Denver 2, Colorado, appearing for United Brotherhood of Carpenters and Joiners of America, Local 55.**

**CHARLES T. MAHONEY, Attorney, 405-09 Symes Building, Denver, Colorado, appearing for International Brotherhood of Electrical Workers of America, Local 68.**

**PHILIP HORNBEIN, JR., Attorney, of Hornbein & Hornbein, 620 Symes Building, Denver, Colorado, appearing for Denver Building and Construction Trades Council, and United Association of Journeymen, Pipe Fitters, and Apprentices of The Plumbing and Pipe Fitting Industry of the United States and Canada, Local 3.**

**STANLEY W. PRISNER**, Attorney, 407 University Building, Denver, Colorado, appearing for Gould & Preisner.

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# PROCEEDING

**Trial Examiner Bellman:** The hearing will be in order. This is a formal hearing before the National Labor Relations Board in the matter of Denver Building and Construction Trades Council; United Brotherhood of Carpenters and Joiners of America, A. F. L., Local 55; International Brotherhood of Electrical Workers of America, A. F. L., Local 68; and United Association of Journeymen, Pipe Fitters, and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, A. F. L., Local 3, and Earl C. Gould and John C. Preisner, doing business as Gould & Preisner. This is Case No. 30-CC-2.

The trial examiner conducting this hearing is Earl S. Bellman of Washington, D. C.

Will counsel, and other representatives of the parties, please state their appearances for the record at this time.

**Mr. Fousek:** For the National Labor Relations Board, Robert S. Fousek and James Sullivan.

**Mr. Williams:** For the United Brotherhood of Carpenters and Joiners of America, A. F. L., Local 55, Wayne D. Williams.

**Mr. Hornbein:** The Denver Building and Construction Trades Council, and United Association of Journeymen, Pipe Fitters, and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 3, represented by Philip Hornbein, Jr.

**Mr. Mahoney:** For the International Brotherhood of Electrical Workers of America, A. F. L., Local 68, Charles T. Mahoney.

**Mr. Prisner:** For Earl C. Gould and John C. Preisner, Stanley W. Prisner.

**Trial Examiner Bellman:** Are these all the appearances?

**Mr. Hornbein:** I would like to raise this point right now. I note there is an appearance for Gould & Preisner. Have they been allowed to intervene here?

**Trial Examiner Bellman:** The charging party is always represented by counsel. That has been so in more than ten years of Board proceedings.

**Mr. Hornbein:** Under the new Act, they would have to have special leave to intervene as I read the statute. The only proper parties here are the Board and the organizations who were charged with unfair labor practice unless Gould & Preisner are permitted to intervene and that is why I raise the point if they are here as an intervening party.

**Trial Examiner Bellman:** I think if you will look at Section 203.8 of the Board Rules and Regulations, Series 5, you will find that among the—the parties by definition are, among others, any person filing a charge or petition under the Act.

I will rule that under that Gould & Preisner are to be represented by counsel without any necessity for intervention as they are a party.

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I have at this time certain formal remarks which I would like to make for the guidance of the parties.

The official reporter makes the only official transcript of these proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation.

Proposed corrections of the transcript should be submitted either by way of stipulation or motion to the trial examiner for his approval. All matter that is spoken in the hearing room while the hearing is in session is recorded by the official reporter unless the trial examiner specifically directs off the record discussion. So if you wish to be off the record, address your request to be off



the record to the trial examiner and not to the official reporter.

Statements or reasons in support of motions and objections should be specific and concise. The trial examiner will allow an automatic exception to all adverse rulings and upon appropriate order, an objection and exception will be permitted to stand to an entire line of questioning. All exhibits should be offered in duplicate. If a copy of any exhibit is not available at the time the original is received, it will be the responsibility of the party offering such exhibit to submit a copy before the close of the hearing unless for good reason shown such copy is excused by the trial examiner.

8 Any party shall be entitled, upon request, to a reasonable period at the close of the hearing for oral argument, which shall be included in the official stenographic record of the hearing. In the absence of any request for argument, the trial examiner may, himself, ask for oral argument if at the close of the hearing he believes such argument would be beneficial to his understanding of the contentions of the parties, and the factual issues involved. Any party shall be also entitled, upon request made before the close of the hearing, to file briefs or proposed findings of fact and conclusions, or both. The request should be made before the close of the hearing and to the trial examiner, and the trial examiner will then fix the time for such filing.

At this time counsel for the Board may proceed with the introduction of formal papers.

(Thereupon the Board's formal file was marked as Board's exhibits Nos. 1-A, 1-B, 1-C, 1-D, 1-E, 1-F, 1-G, 1-H, 1-I, 1-J, and 1-K for identification.)

Mr. Fousek: I have handed to the reporter and have had her mark for the purpose of identification the formal file of the case as Board's Exhibit 1-A to 1-K, inclusive; Board's Exhibit 1-A, being Amended Charge, filed by

Gould & Preisner; Board's Exhibit 1-B, being the Complaint issued by the Regional Director; 1-C is Notice of Hearing of said Complaint; 1-D Affidavit of Service of Complaint, and Notice of Hearing with return receipts attached, showing service on the parties; 1-E a Motion for Extension of Time filed by the respondents; 1-F, an Order Extending Time for Filing an Answer, signed by Hugh E. Sperry, Regional Director; 1-G, An Affidavit of Service of Order Extending Time for Filing an Answer, with return receipts attached showing service on the parties; 1-H, a Motion for Bill of Particulars filed by the respondents; 1-I, Bill of Particulars and Order showing service upon Stanley Prisner, Philip Hornbein, Charles Mahoney and Mr. Williams. Will you acknowledge receipt of the Bill of Particulars and the Order?

Mr. Prisner: I do.

Mr. Hornbein: I do.

Mr. Mahoney: I do.

Mr. Williams: I do.

Mr. Fousek: 1-K, being Answer and Motion to Dismiss which was filed with counsel for the Board this morning.

Board's Exhibits 1-A through 1-K, inclusive, are offered in evidence.

Mr. Prisner: No objection.

Mr. Mahoney: No objection.

Mr. Hornbein: No objection.

Mr. Williams: No objection.

Trial Examiner Bellman: Any objection on the part of any of the parties? There appears to be no objection, so Board's Exhibits 1-A through 1-K, inclusive, are received in evidence.

10 Mr. Fousek: Mr. Examiner, if you will glance at the notice of the hearing, you will note that the place of the hearing was the District Court Room, and do you realize we are now in the Circuit Court of Appeals? I wonder if the parties will acknowledge oral notice of changing the place of hearing?

Mr. Mahoney: We will.

Mr. Hornbein: We will.

Mr. Williams: We will.

Mr. Prisner: We will.

Trial Examiner Bellman: Is there any question raised now by anyone as to this oral notice?

Mr. Mahoney: No question, Mr. Examiner.

Trial Examiner Bellman: The trial examiner was also advised orally, and the hearing, of course, is proceeding in the Court Room of the Circuit Court of Appeals. I would like about ~~fifteen minutes~~ recess to examine these documents.

Hearing will be at recess for fifteen minutes.

(Whereupon, a short recess was taken.)

11 Trial Examiner Bellman: The hearing will be in order. The record may show that the recess has continued some 15 minutes longer than previously scheduled, so the Trial Examiner could study the answer of the respondents.

I should like to ask at this time about the various motions to dismiss which are a part of the answer. There are some 5 motions to dismiss: One on commerce; two of them pertaining to constitutional grounds, and another pertaining to whether or not matters are res adjudicata, and a final prayer on the last page for dismissal of the complaint.

Do the respondents want a ruling on any of those motions at this time, or would you prefer to have it reserved and ruled on at a later time?

Mr. Mahoney: Mr. Examiner, may the record show that each objection and each motion made by any one of the counsel for the respondents will go to and for and on behalf of all other respondents as we proceed during the hearing.

Trial Examiner Bellman: Any objection to that?

Mr. Fousek: None whatsoever.

Trial Examiner Bellman: I think that would expedite matters if you will arrange to cooperate on that matter so



as to make duplications as infrequent as possible that will be appreciated.

Mr. Mahoney: But not, of course, limiting any counsel who represent respective parties.

12 Trial Examiner Bellman: All right.

Mr. Mahoney: Now, the respondents desire at this time to raise the fourth defense, fourth and further defense, on page 3, and request a ruling upon the same before we proceed further with the case.

And at this time we desire to raise the objection that the Board has no jurisdiction to proceed with this matter at this time for the reason that the District Court in this District in Case No. 2407, Civil Action No. 2407, District Court, Denver, Judge Symes presiding, has heretofore, on the 30th day of March, this year, upon findings of fact and conclusions of law, has entered a decree which will, in our opinion, deprive the Board of, at least,—is *res adjudicata* to all the questions that will be involved at this time.

And I might say to the Examiner that we have ordered copies of the findings of fact of the District Court in this case heretofore mentioned, and also the conclusions of law. We have ordered certified copies and as soon as those copies are ready we desire permission to place them in the record in sustaining our objections.

The conclusions of law—the motion for—first, for a fourth and further defense, respondents move that the complaint be dismissed on the ground that an action heretofore heard by the United States District Court for the District of Colorado, Civil Action No. 2407, between the Regional Director, and the Denver Building and Construction Trades

13 Council, and so forth, March 30, 1948, and adjudged that the activities herein complained of do not affect commerce within the meaning of the Act, and that the conduct of the respondents herein complained of does not constitute unfair labor practices within the meaning of the Act, and said decision constitutes a bar to this proceeding under the process of *res adjudicata*.

And in addition thereto, the conclusions of law by the Court heretofore mentioned are, as follows:

First, the Court has jurisdiction of the parties and of the cause of action.

Second, the construction of the houses and other buildings in the City of Denver involved in the action constitutes a purely local project, and intrastate in character, and does not affect interstate commerce, is not subject to the provisions of said Act; that in this case the Regional Director has no reason to believe that the charges made with him in this case affect commerce.

It is therefore ordered, adjudged and decreed that the petition herein be dismissed.

Done and filed in open court this—I think the day—this is blank—30th day of March, 1948.

By the Court.

"J. Foster Symes."

I will also give you a copy of that if you desire.

Mr. Fousek: I desire one.

14 Mr. Mahoney: If you desire a certified copy, we will have one for you.

Now, the sole question in this case is, no matter what the charges and complaints of these acts were, unless it affects commerce, of course, there is no case; unless it affects interstate commerce within the meaning of the interstate commerce clause of the Constitution, and the Court, the District Court, constituted lawfully and legally by the United States Constitution, whose rights and authorities are supreme in this matter, unless appealed from or reversed, has held it does not affect commerce, and, therefore, there is no case involved here.

Therefore, the Federal Government would have no jurisdiction, unless that case is appealed from, to proceed further; neither would this Board, if a regularly constituted Federal Court under the Constitution has held, after all of the evidence was produced, and I assume from their complaint and the bill of particulars furnished us, practically

all, or almost identically the same facts would be produced, and there has been no additional charge filed, no amended complaint since that hearing. And after a full hearing, both as to the facts, and two days' argument on questions of law, and arguments of counsel on both sides, the District Court has made a finding that there is no commerce question involved here, and none of the acts and doings of any of the parties, even assuming for the purpose of argument, that they were all true, none of the acts alleged and  
 15 none of the acts proved brought the case within the commerce clause of the Constitution of the United States. Therefore, the case must fall, and, therefore, it is futile for the Board to proceed. The Board don't have any jurisdiction to proceed, and it would be of no avail to proceed any further.

We concede the fact that possibly counsel are here and would like to take the evidence in the case, but nevertheless, this is a substantial right, and these defendants should not, nor should all parties concerned, be harassed and time taken in repeating this case again, the facts and the evidence, and the law, when it has already been adjudicated, and we submit it is a question of res adjudicata, a former adjudication, and, therefore, the Board is powerless.

On the question of res adjudicata, I want to call the Court's attention to the Sewerage Commission of City of Milwaukee v. Activated Sludge, Inc.—this is the Circuit Court of Appeals, Seventh Circuit, decided in 1936. This is an interlocutory decree, affirmed on appeal, which in fact finally determines issues presented by pleadings and settles controversies over subject-matter involved, is sufficiently final to determine other litigation between same parties respecting same issues, even though in legal nomenclature it may be termed an interlocutory decree.

I am not going into the long, lengthy case, but I do want to read at page 23:



16        "*Res Adjudicata*. Is the Commission precluded by the prior decree on the merits of the suit against the City, from presenting defensive issues in the instant suit which were not presented, although available, in the previous suit? The prior decree was an interlocutory one, affirmed on appeal."

"We are committed to the rule that for the purpose of the doctrine of *res adjudicata* an interlocutory decree, affirmed on appeal 'which in fact finally determines the issues presented by the pleadings and settles the controversies over the subject-matter involved, is sufficiently final to determine other litigation between the same parties respecting the same issues, regardless of the fact that it may be in legal nomenclature termed an interlocutory decree \* \* \*' and 'Final, as used by the courts when dealing with the subject of *res adjudicata*, is not to be determined by adjective terms.'"

17        Now here, there is no question about a decision having been made upon the facts and upon the testimony. But the petitioners have no case here under the law, or the facts. Therefore, the injunction is denied. Therefore, the Board is powerless, or, at least, futile to proceed further, because no objective would be gained by it even from a practical viewpoint, but from a legal viewpoint the Court has no jurisdiction under the law and it has been *res adjudicata* decided by the District Court. Therefore, the petition at this time should be dismissed.

Trial Examiner Bellman: Is there any further argument on this motion by the respondents?

Mr. Mahoney: The gentlemen may want to reply to Mr. Fousek's argument.

Mr. Prisner: What was that citation?

Mr. Mahoney: 81 Fed. 2nd, Page 22.

Trial Examiner Bellman: All right. I will reserve the ruling. You want to argue this motion for the Board?

Mr. Fousek: For just a minute. Section 10L, under which the Board proceeded before the District Court gives

the Board the authority, in fact, compels the Board to secure, if possible, temporary relief during the pendency of the administrative proceeding.

The District Court, under Section 10L, is empowered to determine whether the Regional Director has reasonable cause to believe that a violation of the law has occurred, and has the power to grant temporary relief, which  
 18 he deems just and proper. The findings and conclusions of a petition for a temporary injunction, pending the ultimate determination of the matter in the administrative proceeding, are, on their face, and in fact, limited in application and effect to the granting of temporary relief. They are not intended to go to the merits of a controversy.

Surely respondents would not claim that they would not be entitled to an administrative hearing had Judge Symes made the contrary decision; had he found that the respondents had engaged in unfair labor practices within the meaning of the Act. They would have proceeded without argument that it was res adjudicata upon the merits. This case is comparable to the Watson Speciality Store case which came under the same section of the Act, and the Trial Examiner in that case said that the decision of the Court did not go to the ultimate merits, but was limited only to the question of granting the temporary relief and he continued the hearing, that is, proceeded with the hearing and made an ultimate finding on the facts which was inconsistent with the findings made by the District Court Judge.

It is my opinion that the Examiner must do likewise in the immediate proceeding, otherwise, the District Courts would usurp the function of the Board, and the Board, itself, would never be given the power to make a determination, either on commerce, or on the merits.

19 Trial Examiner Bellman: Do you have anything further?

Mr. Fousek: Nothing further.

Trial Examiner Bellman: Does the Company have any argument?

Mr. Prisner: We will stand on Mr. Fousek's statement.

Trial Examiner Bellman: Do the respondents have anything further?

Mr. Hornbein: For the purpose of the record we want to enter a formal objection to the company's appearance here, since they haven't intervened here, and they haven't been given leave to intervene. We say under the Taft-Hartley law they have no right to appear here and participate in this proceeding.

I realize Your Honor has ruled on that, on the basis of Board's ruling, but we say they have no right to appear here, and it is contrary to the provision of the Taft-Hartley statute, and, therefore, that must take precedence. We want the record to show that we object to the participation in this proceeding of Gould-Preisner, and their representatives.

In this matter of *res adjudicata*, it is clear that the action of the District Court here is absolutely binding upon the Union and upon the National Labor Relations Board, and it is inconceivable to me that it would be the proper thing to do in the face of that decision to flout the authority of the duly constituted Judicial Tribunal for the State of Colorado which has made a final conclusive ruling on this issue.

That is the very crux of the case that is here. The  
20 respondents have not engaged in any acts affecting interstate commerce. Now, it has been decided finally and conclusively against the position of counsel for the Board, and the only way that that decision can be reversed is by an appeal to the Circuit Court of Appeals. It cannot be overruled by Your Honor, or by the Labor Board, or by any other tribunal. and I think that is necessarily what counsel is seeking in this proceeding. It goes to the very heart of this case.

It necessarily follows that if the respondents have not engaged in these acts, the Taft-Harley law does not apply. That is exactly what the Court has held here.



Let me read for Your Honor how sweeping this decision is:

"The construction of the houses and other buildings in the City of Denver involved in this action constitutes a purely local project and intrastate in character and does not affect interstate commerce, is not subject to the provisions of said Act."

The Court held further here in this case:

"The Regional Director had no reasonable cause to believe the charges made with him in this case affect commerce."

Now, on the fact of that, the doctrine of *res adjudicata* is absolutely applicable, and I respectfully submit that this is a factitious proceeding to go ahead here and take up the time of Your Honor, and every body else when ultimately the decision in this case must follow the ruling of Judge Symes.

21 Judge Symes—you see, we didn't start the action in the Federal District Court here. Why, it was the Labor Board that started the action. We were dragged into that court. They sought the relief there and they went in with their eyes open. Now, they say Judge Symes has usurped the authorities of the Board. That is a ridiculous contention in view of the fact they are the ones that commenced the action. They chose that tribunal. Now, I submit, they must be bound by that decision. They are bound by that decision. It is on the same issue, the same parties, and as Mr. Mahoney has said, and because of the reasons he has given, there is abundant authority to back up that decision absolutely.

It might be if Judge Symes made any other ruling and he hadn't chosen to grant an injunction, it would have been different. That is not what he did. He held the Taft-Hartley law is not applicable. Now, if the Taft-Hartley law is not applicable on the basis of these facts, these is-

sues, then what are we doing in this proceeding under the Taft-Hartley law?

It appears what the Labor Board is trying to do, they want to eat their cake and have it, too; they want to take a crack at us in District Court and when they lose there, when the judge rules they don't have any right to prosecute us, then they take another crack at us under the Labor Board.

That smacks of persecution, not prosecution:  
22 Dragging labor unions from one court to another;  
if they don't get a satisfactory decision in one court, they try some other tribunal. That couldn't be the intent or the purpose in passing the law.

And I respectfully submit, and I don't believe it is the desire, or the purpose of the National Labor Relations Board to submit labor unions to that kind of a treatment, to flout the authority and jurisdiction of the United States Court.

Mr. Williams: I want to reply just briefly to the contention made by counsel for the Board that had the Court issued a different order, issued the injunction determining that there was reasonable cause to believe that an unfair labor practice had been committed, we would not, then, of course, be insisting that such a determination was *res adjudicata* in this proceeding, and hence, bar us from introducing evidence that no unfair labor practice had occurred.

If Your Honor please, the decree of the District Court, as I read the statute, on a petition for temporary injunction by the Board, would not be *res adjudicata* on one issue whether unfair labor practice has occurred, because the statute contemplates that the charge shall state whether—shall charge an unfair labor practice. Then it is on the basis of such a charge, without any reference to commerce being present—it is on the basis of such a charge the Board moves said violation and petition for temporary injunction,

and on the issue of unfair labor practice, the Court  
23 is obliged to proceed and apply this test: Is there reasonable cause to believe that the allegations of

the charge are true? But we have here a different proposition.

Now, I would like to call to Your Honor's attention the doctrine of jurisdictional fact, and the point I am now going to make is closely analogous to the issue of whether those practices ever occurred or not, as affecting commerce. The decision of the District Court must be *res adjudicata*, as we contend, and had Judge Symes decided that commerce point adversely to the respondents, we would have had to say that the decision on that issue was *res adjudicata* as to us.

But the commerce point, as Your Honor clearly appreciates, determines the entire basis of the jurisdiction in this case, the jurisdiction of the Board to proceed. Now, obviously, it may be said Congress has used the term "affect commerce" in its practice and has attempted to confer upon the Board all of the power that Congress has to regulate commerce. True, but Congress cannot change the provisions of the United States Constitution; it cannot confer upon the Board power to proceed in a case where the Federal commerce power does not extend, and the decision of Judge Symes amounts to this: That on this matter of jurisdiction, this jurisdictional power, as I see it, the Federal power does not extend to the building activities that are involved in this case.

24 On that issue we submit, without qualification, that the decision of the District Court is binding, and on every part *res adjudicata* operates as a bar to this proceeding, because it is a decision that neither the Board nor the Federal Government have jurisdiction over the building activities involved in this case.

Mr. Mahoney: A few brief remarks: To all of us, Mr. Examiner, and I presume, maybe, you have had more experience than lots of them, but this is a new law. It is a very complex law, and it is a law that involves a great part of our daily lives, a great part of the employers' and also the employees in this Nation. It is a law that either will



fail or succeed, depending upon how this law is used, largely.

Now, on occasions, oftentimes counsel, whether he represents the prosecution, or a Government before Boards, it is more or less human nature to enforce and to be successful, and carry on your work, and oftentimes you carry on too far, carry on to vindictiveness.

Now, in this case—this case should be reasonably and sensibly handled. The object and purpose of this law is not to crucify labor. The object and purpose of this law is not to set aside the Constitution, nor the Courts of this Nation, nor their decisions, nor either is the object and purpose to harrass the employer, or the employee, or the contractor, or the constructor; neither is it to harrass labor.

25 Now, this law can be used to harrass labor. If it does that, it will fail in its complete purpose and object that the lawmaker had in constructing this law.

I noticed in the case that was proceeding before Judge Symes, and I noticed it in this case—I think that Government counsel have taken entirely the wrong slant in this case: That we, as Americans, whether we represent labor, or we don't represent labor, we don't agree with their position, and I think it is a bad position, one that every man resents, and I think it is a position that we Americans resent very firmly, namely, that what we, the attorneys for this Board, say are our opinions, therefore, you must act; if we have reasonable cause to believe, the Judge of the District Court must issue an injunction order. That was their argument. Counsel made the same remark here. He said that the District Court will usurp the power of the Board. Well, who is this Board? This isn't a kingdom set up. They have assumed that the Board is mighty. These courts will infringe. The courts are duly constituted officers here, created by the Constitution, and the Taft-Hartley law didn't set aside the District Courts of the United States of America. Neither can counsel nor any one else say that they have a right to interfere or infringe upon

the rights of the District Court. But no, the District Court must not infringe upon the rights of this Board!

Now, what did he say? We want this law enforced. We don't want the courts infringing on the rights of this  
 26 Board, and stopping this Board. The District Court is superior to this Board. The Taft-Hartley law was no constitutional amendment taking away from the District Court or the Supreme Court any rights, any protection afforded the American people, nor afforded the working man in this community.

These lawyers representing, both the ones that appeared in the District Court, and here, their attitude is here that the court must keep out, not infringe. The very language he just used, "The court must not infringe on this Board." This Board must not infringe on the powers of this court, or else, we will fall. This Board must be very cautious not to go beyond the rights of the Constitution. No matter who you are, whether you are a lawyer representing the Board, or an Examiner, or who you are, you have got to say, the first thing to do is to preserve the Constitution.

If the Constitution of this Nation has said that these laboring men have violated no commerce clause of this Constitution, there would be no case. You say, what is the Constitution, gentlemen? Where did they violate it? Show me! This judge says they didn't, but you ask me to proceed, and say, "You must go ahead, and not let this District Court infringe on our rights." If you are going to take away the power of the High Court of the United States, then, you must prepare a Constitutional Amendment, and if this Board starts to interfere with the  
 27 powers of the Constitution of the United States, and the courts, then you are going to an autocracy. They will fear the power of this Board. It will become one of the most dangerous instrumentalities created by a Government.

We know we have courts, and we have judges—and to have the courts step aside—don't infringe on our rights—we are going to crush these unions. When that happens, then you will have warfare, you won't have peace. The laboring man then will say we have been taken in and harrassed by boards; courts have given decisions, and after they gave the decisions, Boards harrassed us. There is nothing left then but outside the law, and that is just what we don't want. These laboring men here have always respected the Constitution. They want to continue to respect it. They say we don't want to be harrassed and set three or four days before a High Court of this country, and when that High Court says, as here, after hearing all the evidence and all the facts, says there is no violation of a commerce clause, and quite naturally, then, the Examiner would say, I will dismiss the case, or the Board representing the Government, I am going to continue this case over and make no finding unless you appeal that decision of Judge Symes, and get a reversal. It is out of my hands.

Now then, that is fair; that is honest; that is decent. That is all these men are asking here. But I do dislike the statements that it is what we believe, and because of that, you must believe it. They say to the  
 28 Examiner: We don't like the District Court infringing on our rights, and we are attorneys representing a great Board. This is no autocratic board that is going to throw aside the Courts' decisions representing the people of our Nation, and this Constitution. And I say that honestly, and sincerely, not as a lawyer, but also as an American who likes to see the Constitution preserved, who likes to keep the laboring man within the group that will respect that doctrine and that will respect the decisions of the District Courts, and we also want these lawyers to respect that doctrine, and the Examiner and the Boards. That is all we ask, I, as an American citizen, and the laboring man and lawyers incidentally represented.



**Trial Examiner Bellman:** Any further argument on the motion?

**Mr. Fousek:** Nothing further.

**Trial Examiner Bellman:** The hearing will be in recess for ten minutes.

(Whereupon, a short recess was taken.)

**Trial Examiner Bellman:** The hearing will be in order.

Upon due consideration of all of the arguments presented, and of the law, the motion of the respondents to dismiss on the grounds that this matter is *res adjudicata* is denied with the privilege of renewing it at the close of the hearing, and after oral argument and briefs are presented, and findings and conclusions. The exception to this ruling, as to all rulings, is automatic.

Ruling is reserved at this time, as requested, on the several other motions to dismiss contained in the respondents' answer.

There was no objection to Board's Exhibit 1-a through k when offered. Are there any at this time? There appear to be none.

**Mr. Mahoney:** We have none.

**Trial Examiner Bellman:** I believe the record shows that there were none in the earlier part of the hearing when offered.

**Mr. Mahoney:** That is correct.

**Trial Examiner Bellman:** There are none now, I take it?

**Mr. Mahoney:** That is correct.

**Trial Examiner Bellman:** Board's Exhibit 1-A through K, is admitted in evidence at this time.

(Thereupon, Board's Exhibit 1-A through K, inclusive, having been previously marked for identification, is received in evidence.)

**Trial Examiner Bellman:** Now, it is just about noon, and I am quite agreeable to governing our recesses in terms of the desires of the parties. I think an hour to an hour and a half for lunch is appropriate, and I am willing to recess now, or go on for another half hour.

Mr. Mahoney: In the record at this time, Mr. Examiner, you have saved our exceptions, but may we also  
 30 state at this time that we desire to offer also as exhibits, when we get them, certified copies of the findings of fact and conclusions of law of the District Court. We desire to offer them as exhibits as soon as we have certified copies of the same.

Trial Examiner Bellman: I will reserve you the right to make any offer at any time later at such time as you get the certified copies. Off the record.

(Discussion here had off the record.)

Trial Examiner Bellman: On the record. The parties appear in agreement that a two-hour lunch at this time until two o'clock will be appropriate, so the hearing is in recess until two o'clock.

(Thereupon an adjournment was taken until 2 p. m. of the same day.)

31

#### After Recess

(Whereupon, the hearing was resumed, pursuant to the recess, at 2 o'clock p.m.)

Trial Examiner Bellman: The hearing will be in order. You may proceed.

Mr. Fousek: Mr. Gould, take the stand, please.

Earl C. Gould, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

#### Direct Examination

Q. (By Mr. Fousek) Would you give your name to the reporter? A. Earl C. Gould.

Q. What is your address? A. Our business address is 1298 South Kalamath.

Q. What is the name of your business? A. Gould & Preisner.

Q. What is the name—do you have a partner? A. Yes, John C. Preisner.

Q. And the business which you conduct is a partnership?  
A. It is a partnership.

Q. Where is your business located? A. 1298 South Kalamath.

Q. Would you describe to the examiner the character of your business location? A. It is a two-story—the  
32 main office is a two-story building that is forty-five feet wide and about eighty feet long. In the rear of that, we have two cinder block structures. They are approximately 24 x 45. Across the street at 1295 South Kalamath, we have a one-story building 60 x 100.

Q. That is all the building facilities which you utilized?  
A. Yes, sir.

Q. In what business are you engaged? A. We are electrical contractors.

Q. How long have you been so engaged? A. Approximately twenty years.

Q. And in conducting your work, will you advise the Examiner what you do. A. We do electrical work in all of its branches, repair, maintenance, new construction on houses, industrial and commercial buildings, repair and maintenance service in all electrical branches, except appliance repairs.

Q. Now, in engaging in the electrical industry as described, do you enter into contracts with various individuals? A. Oh, yes, most of the time.

Q. Do you have any employees? A. At the moment, there are 28 in our organization. We have had as many as 44. Of the 28 in our organization today, 13 of them are Denver licensed electricians, 10 apprentices, and the remaining five are stockmen, and armature winders, and our office.

33 Q. What type of materials do you use? A. Oh, the majority of them are steel and copper products. Seventy percent, or approximately seventy percent, I would say, last year, we done a business of, in round figures, \$165,000, of which \$86,560.30 was for material. Of that amount, \$55,745.25 was purchased from more than forty



firms without the State of Colorado. Of the merchandise that we purchased here in Denver was bought because of our inability to get it from our regular suppliers. The nature of the merchandise that we purchased locally was all produced outside of the state with the possible exception of some nails, and I believe that the iron ore out of which these nails were basically made came out of the state—

Mr. Mahoney: I object to that.

Trial Examiner Bellman: Sustained.

Q. (By Mr. Fousek) Would you tell the Examiner just the material, what type, such as conduits—A. We used conduits in all of its sizes. We used a large quantity of Electric metallic tube, steel boxes, panels, wire—copper wire in all of its sizes, and oh, switches and plugs which is known as wire devices—

Q. What do you say was the total value of those materials which you purchased during the year 1947? A. \$86,560.30.

Q. What percentage of that amount—or what amount of those materials came from sources directly outside of Colorado?

34 Mr. Mahoney: That has been asked and answered. He stated it.

Trial Examiner Bellman: I will overrule the objection.

Mr. Fousek: I don't think the record is clear.

Mr. Mahoney: Exception.

A. Approximately seventy percent. The exact amount was \$55,745.25.

Q. (By Mr. Fousek) Now, did you ship any materials outside of the state? A. Yes.

Q. What type of materials have you shipped outside of the state?

Mr. Mahoney: To which we desire to object as being wholly irrelevant and immaterial unless there is a premise first shown as a basis for the introduction of this testimony that the respondents or any members attempted to prevent the shipment outside of the state of Colorado, otherwise, it would be just surplusage and has no probative value in this case directly, or indirectly.

**Trial Examiner Bellman:** The objection is overruled.

**Mr. Mahoney:** Save our exception.

**A.** We make steel tube couplings and connectors from a part of the materials which we purchase outside of the State. These go through various steps of manufacture before they are finished.

**Q. (By Mr. Fousek)** Now, who does the manufacturing?

**A.** Gould & Preisner. We also make a water sprinkler of this material which has had wide distribution all over the United States.

**Q.** What amount of money have you sent to points outside of the state?

**Mr. Hornbein:** When?

**Q. (By Mr. Fousek)** In 1947? **A.** Oh, about, I would say about five percent.

**Q.** Five percent of the articles that you purchased during the year? **A.** Yes.

**Q.** Would you tell the Examiner the materials, or some of them—

**Trial Examiner Bellman:** Just a minute. You say five per cent of the articles you purchase. Are you referring to the \$86,000 or the \$55,000?

**The Witness:** The \$86,000, sir.

**Trial Examiner Bellman:** So the value of the products which you shipped outside of the state would be approximately five percent of that figure?

**The Witness:** Yes, sir.

**Trial Examiner Bellman:** Proceed.

**Q. (By Mr. Fousek)** Would you state for the record, Mr. Gould, the names of some of the firms for whom you did work in 1947? **A.** Oh, we did business with the Texas Company.

**Q.** Could you tell the Examiner the approximate value of the service you rendered to the Texas Company?

**Mr. Mahoney:** Objected to as immaterial; has no bearing in this case no matter what he did for the Texas Company.

**Trial Examiner Bellman:** Is this to be broken down to

terms of inside the state of Colorado and outside the state of Colorado, or is your question a general one, regardless of where?

Mr. Fousek: I hadn't thought of that matter, as a matter of fact, sir.

Q. (By Mr. Fousek) Do you do any business for Continental, or do you have any business for any one outside of the state of Colorado?

Mr. Mahoney: I object to that as being immaterial.

Trial Examiner Bellman: The objection is overruled.

Mr. Mahoney: Unless there is some basis, first, there has been an interference with interstate commerce.

Trial Examiner Bellman: I will give you a standing objection on that question, any questions pertaining to material sent outside of the state of Colorado.

The Witness: May I answer it?

Trial Examiner Bellman: Ask the question again.

Mr. Fousek: Would you read the question back, please?

Mr. Mahoney: Save an exception to the ruling.

(Last question here read by the reporter.)

37 Trial Examiner Bellman: Will you reframe that question.

Q. (By Mr. Fousek) Do you do any business for any one outside of the state of Colorado? A. Well, we do business for firms that have their main offices outside of the state of Colorado.

Q. But are any of your services performed outside of the state of Colorado? No, sir.

Q. Do you do business for Continental Air Lines? A. Yes, sir.

Q. Where? A. Out at the Municipal Airport.

Q. What type of service have you rendered for the Continental Air Lines?

Mr. Mahoney: Objected to as being incompetent, irrelevant and immaterial and having no bearing on this case; no probative value and no evidence to prove this—any part of this complaint.



A. Well, whatever work is necessary to keep their plant and their equipment maintained in good order and operation.

Q. Do the maintenance work at the Continental Air Lines they have offices and headquarter in Denver? A. Yes.

Mr. Mahoney: I object to that as being leading and suggestive.

38 Trial Examiner Bellman: The objection is overruled.

Mr. Mahoney: And for the further reason it has no bearing if he did the work for everyone in Colorado, purely a local affair, nothing to do with interstate commerce.

Trial Examiner Bellman: The objection is overruled.

Mr. Mahoney: Save an exception.

A. I have.

Q. (By Mr. Fousek) What other firms of the same nature to Continental Air Lines? A. Continental Oil Company, Standard Oil.

Q. Where are services performed for Continental Oil?

A. Wherever they may deem it necessary; wherever they have electrical work to be done; at their bulk plant; at their service stations; at their offices.

Mr. Mahoney: We object to this testimony and ask it all be stricken for the reason it is purely a local affair and there is no evidence that there was any interference with it on the part of any of these respondents.

Trial Examiner Bellman: The objection is overruled. Deny the motion to strike.

Mr. Mahoney: Save an exception.

Q. (By Mr. Fousek) What other firms of the same character? A. Standard Oil and Texas Company.

Q. What work did you perform for the Standard Oil?

A. The same sort of work we do for Continental Oil  
39 and for Continental Air Lines.

Trial Examiner Bellman: Will you be a little more specific and tell me what you do for Standard Oil and what you do for the Texas Company? A. If there is a break-

down, for instance, a motor down at the bulk plant and we are called to get it in operation, it may necessitate the removal of the motor and installation of another one and while we are repairing that, we may find a little simple thing wrong, like a fuse, or a loose connection—

Mr. Mahoney: We object to this and ask it be stricken, because it has no probative value; there is no evidence that these respondents, or any one of them, or any witness herein, by any act or deed prevented the performing of those services, or any of them. It is purely a local matter within the city and town of Denver and state of Colorado.

Trial Examiner Bellman: The objection is overruled, and deny the motion to strike. I can give you a standing objection to this testimony the same as if you said it again every time.

Mr. Mahoney: Very well. Let the record show that I make an objection on behalf of all of us; make an objection to all this line of testimony.

Trial Examiner Bellman: All right. You have your standing objection. The objection is overruled and motion to strike denied.

Q. (By Mr. Fousek) What was the total value of the services rendered by your organization to Continental for 1947? A. I haven't those figures before me, I would say—

Q. Can you give—A. —in round figures, \$4,000.

Q. And with reference to Continental Air Lines? A. About the same, possibly \$5,000 with them.

Q. And Standard Oil? A. Not so much.

Q. What is the value of the services to Standard Oil in that year? A. I would say probably \$3,000.

Q. Texaco? A. Maybe around \$1200.

Q. Do you know a construction firm known as Doose & Lintner? A. Yes, sir.

Q. Did your organization perform any electrical work on a building known as the Chapman Building? A. We did.

Q. Will you tell the Examiner how it happened you performed those services?

Mr. Mahoney: Where is that located?

A. 1068 Bannock.

Q. (By Mr. Fousek) Will you tell the Examiner how it happened you performed some services out on that building?

A. On or about September 26, 1947, my partner showed me a proposal, or a bid which he had given  
41 to Doose & Lintner for—

Mr. Mahoney: I object to anything that his partner showed him.

Trial Examiner Bellman: The objection is overruled.

A. I have a copy of it here.

Mr. Mahoney: Save an exception.

A. I have a copy of it here, to install about 80 outlets for the Chapman Building with fluorescent two-light fixtures for the ceiling and outlets, 40 for general lighting, except 510 in toilets and warehouse parts, but no power wiring for the sum of \$2300. I might add that Mr. Preisner and myself, when one makes a bid, we always show it to the other—

Mr. Mahoney: Object to that and ask it be stricken, no probative value to prove anything in this case.

Trial Examiner Bellman: The objection is overruled and deny this motion to strike.

A. So that the other partner may be familiar with what takes place in our business.

Q. (By Mr. Fousek) Did you send some of your employees to the Chapman Building on Bannock Street? A. Yes, we started the work there, I believe, about the 20th of October.

Q. All right. Now, what do you say the approximate value of services which you were to perform was? A.  
42 \$2300.

Q. Now, approximately, what was the value of the materials which a job of that size would take? A. Oh, you can usually figure about half material and half labor.



Q. With whom did you enter into the agreement to perform those services? A. Mr. Presiner entered into the agreement.

Q. With whom did he enter into the agreement?

Mr. Williams: Object to that unless the witness has personal knowledge.

A. He entered into—

Q. (By Mr. Fousek) Just a moment. Do you personally know with whom Mr. Preisner entered into that agreement? A. I do.

Q. With whom was it? A. With Mr. Lintner.

Q. That was one of the partners in Doosé & Lintner? A. Right; yes, sir.

Q. What was the Chapman Building? A. The Chapman Building was a structure at 1068 Bannock—

Q. What type of structure? A. Well, it is of masonry construction. I understand it was to be used in part—

Mr. Williams: Just a moment. What the witness understands, we object to.

43 Q. (By Mr. Fousek) Just tell me what the building is. A. Masonry construction.

Q. About what size? A. Oh, I would say, about 80 x 100.

Q. How many floors; has it more than one? A. Two floors.

Q. When were you to begin work? A. When the job was ready for us.

Q. When did that occur? A. We started work there—did some work there on—about October 20th.

Q. When was the last day any of your employees performed any services on that building? A. I think around February 8th or 10th.

Q. Between October 20th and February 8th or 10th, were some of your employees continuously on the job? A. Weather permitting and holidays excepted.

Q. But by February 8th, had you completed work on the building? A. No, our work wasn't completed on that date.

How much of the work was yet to be completed on February 8th? A. Oh, probably 45 percent, 40 to 45 percent.

Q. You say it was 45 percent that was yet to be completed, or there was 45 percent completed? A. 45 percent completed; about 45 percent completed.

Q. Do you know an individual whose name is Jack Fisher? A. Yes, I do.

Q. Who is he? A. He is the assistant business agent of the International Brotherhood of Electrical Workers, Local No. 68.

Q. Do you know how long he has had that position? A. Oh, I think probably six or seven months.

Q. Where is the Patterson Building? A. The Patterson Building, on the corner of 17th and Welton.

Q. How do you spell that? A. W-e-l-t-o-n.

Q. Do you recall seeing Jack Fisher on or about November 15th, or 20th at the Patterson Building? A. Yes, on the sidewalk in front of the Patterson Building.

Q. Did you have a conversation with him at that time? A. I did.

Q. Was anyone else present? A. No.

Q. What time of the day was it? A. About ten-thirty or eleven o'clock.

Q. In the morning? A. In the morning; yes, sir.

Q. Can you be any more accurate than between the 15th and 20th of November? A. No, I can't.

Q. What was said at that time? A. Well, Jack said to me, he said, "Earl, what are we going to do about the Bannock Street job?"

Q. What job was that? A. Well that was this Doose & Lintner job at 1068 Bannock.

Mr. Mahoney: Mr. Examiner, we want to enter an objection here at this time; renew our objection to all this line of testimony for the reason that there is no basis for it; to the date of this witness' testimony, there is no evidence that any of the respondents herein in any way by act or deed interfered with the flow of commerce coming in or out of Colorado, and this testimony will be wholly immaterial.

Trial Examiner Bellman: I will give you a standing objection and consider it is based on that objection.

Q. (By Mr. Fousek) Now, what else was said? A. Well, Jack stated we would be—that we were the only non-union people on the job and that he didn't see how, that the job could progress with our being on it. I stated that we had the contract to perform the electrical work on that premises and that we proposed to carry on with it.

Q. Now, did you have any further conversations with Mr. Fisher relative to the same matter? A. Yes, about the middle of December.

Q. Where?

46 A. Down in the basement of what we call the City Hall. That is the Municipal—City and County Building, I guess they call it.

Q. What time of the day? A. That also was in the morning.

Q. Anyone else present? A. No, sir.

Q. What was said? A. Well, it was practically a repetition of our conversation at 17th and Welton with the exception that I stated that we were going to complete the job unless we were bodily put off.

What did Mr. Fisher tell you at that time? A. Well, he said it was going to be worse for Gould & Preisner and for Doose & Lintner.

Q. Was that all that was said? A. As far as I can recollect, that was the gist of the conversation.

Q. Do you recall whether or not a picket was ever placed in front of the construction site at 1068 Bannock, the Building known as the Chapman Building? A. Yes, sir.

Q. Do you know the approximate date when such picket was placed there? A. No, I don't.

Q. When did you first learn there was a picket there?

47 Mr. Hornbein: I object to what he learned as to when there was a picket. If he wants to testify when he saw a picket, that is all right.

Mr. Fousek: I will rephrase the question.

Q. (By Mr. Fousek) When did you first see a picket there? A. I think it was around the 25th of January. I



am not too certain as to the exact date. I think it was around then.

Q. Did any representative of the building and construction trades council discuss that placing of a picket sign there with you? A. No, sir.

Q. You are not sure of the date the picket was placed there? A. No, I am not.

Q. Did your employees cease working when the picket was placed there? A. No, no, we kept right on working.

Q. Do you, of your own knowledge, know how long the picket was maintained in front of the building and construction site of the Chapman? A. At least two weeks.

Trial Examiner Bellman: When you say at least two weeks, is that two weeks after the date you testified to, the 25th of January?

Mr. Gould: I am not too certain about that date; the 25th I was there. Approximately two weeks after I was  
48 there on the 20th—

Q. (By Mr. Fousek) Regardless of what date the picket was placed there, you realize it was maintained about two weeks in length? A. Yes, sir.

Mr. Fousek: Would you mark that as Board's Exhibit  
21

(Thereupon, document referred to was here marked as "Board's Exhibit No. 2, Witness Gould," for identification.)

Q. (By Mr. Fousek) I hand you document which I had the reporter mark as Board's Exhibit 2, and ask you to tell me what that is. A. This is a letter received from Doose & Lintner Construction Company, dated January 22, 1948, addressed to Gould & Preisner.

Mr. Hornbein: I didn't get that answer.

Trial Examiner Bellman: Read the answer.

(Last answer here read by the reporter.)

Mr. Fousek: Mark this Board's Exhibit No. 3.

(Thereupon, document referred to was here marked as "Board's Exhibit No. 3, Witness Gould," for identification.)

Q. (By Mr. Fousek) I have handed to the reporter and had her mark document as Board's Exhibit 3. Could you tell me what that is? A. This is a copy of a letter which we, Gould & Preisner, sent to Doose & Lintner in answer to their letter of January 22nd.

49 Trial Examiner Bellman: What date does that document bear?

The Witness: 24th, sir.

Mr. Fousek: Would the parties be willing to stipulate that Board's Exhibit No. 3 is a true and accurate copy of the original letter?

Mr. Mahoney: I haven't seen the letter, but if you say it is a true copy of it, we have no objection to stipulating. I will take your word for it. We stipulate that it is the copy of the original.

Mr. Fousek: Thank you, very much.

Board's Exhibits Nos. 2 and 3 are offered in evidence.

Trial Examiner Bellman: Stipulate to three?

Mr. Fousek: No, one is an original and the other is a copy so it isn't necessary.

Mr. Mahoney: Could I see them in the order in which the exhibits are marked—

Trial Examiner Bellman: Off the record.

(Discussion here had off the record.)

Trial Examiner Bellman: Be on the record.

Mr. Mahoney: You offer exhibit—this is Exhibit 2, is it?

Mr. Fousek: Yes, marked at the bottom.

Mr. Mahoney: Exhibit 2 and Exhibit 3. On behalf of the respondents herein, the Denver Building Trades and Construction Council, and the United Brotherhood of Carpenters, and National Brotherhood of Electrical  
50 Workers, and the United Association of Journeymen, Pipe Fitters and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Can-

ada, we desire, on behalf of all the counsel, we desire to object to Exhibit 2 for the reason that this is not a letter from them to Gould & Preisner, nor is it a letter from them to Doose & Lintner, has no binding effect upon them; it is of no value to prove any of the charges in this complaint as against them. It is purely correspondence between Preisner and Gould, and an organization who is not a party to this suit, nor is it a letter signed by any of the organizations heretofore mentioned and would be purely hearsay, and in the letter to Doose & Lintner, reply by Gould & Preisner, it would be simply a self-serving declaration relating their positions between the contractor and themselves, and it has no bearing—at least, it is inadmissible as to each and all of these respondents heretofore mentioned.

This is a letter by Preisner to Doose & Lintner, and a letter from Doose & Lintner to Preisner & Gould. Certainly, it would have no admissibility against any of these respondents, purely hearsay, self-serving declaration and shouldn't be admitted as against any of the parties herein.

Trial Examiner Bellman: You object now to both documents?

Mr. Mahoney: I object to both documents.

Trial Examiner Bellman: 2 and 3?

Mr. Mahoney: Neither of the documents are signed  
51 by any of the individuals, of unions, or organizations  
that are represented by counsel for the respondents  
here.

Trial Examiner Bellman: Had you offered both documents?

Mr. Fousex: I have offered both; yes, sir.

Trial Examiner Bellman: Any other objection?

Mr. Hornbein: We would like to emphasize, Your Honor, that this evidence is improper. We have no connection with Doose & Lintner. We are not responsible for anything they may have said or done or written. Counsel for the Board hasn't stated for what purpose these letters are being in-



troduced, and as Mr. Mahoney has pointed out, it is wholly immaterial and irrelevant what a firm of contractors of two different firms of contractors may have written to one another with neither of which we have any connection. They don't represent the union.

I would like to point out two sections of the law in that respect, Your Honor. In the first place, the law very clearly points out that any labor organization, or anybody else, is responsible only for an unfair labor practice committed by a duly authorized agent, and secondly, I would like to point out that this procedure here is governed, according to the terms of the statute, by the applicable rules of evidence existing in Federal District Courts. Now, I am sure in any Federal Court in the United States this evidence, these two letters that counsel has offered, would be ruled out as completely improper, and immaterial and irrelevant, and there-

fore, I say, under the provisions of the statute, a ruling by yourself is required to sustain our objection to these exhibits.

Mr. Mahoney: In addition thereto, I want to say that both the gentlemen who wrote those letters, as I understand it, both Gould and Preisner are present in the courtroom under subpoena, and likewise, Doose and Lintner are also present in the courtroom. Mr. Preisner's letter to them is purely argumentative, and a self-serving declaration invoked on his behalf without appearing as a witness, and it is contrary to all the rules of evidence in Federal Court, or in any court.

Trial Examiner Bellman: You wish to state the purpose of the offer?

Mr. Fousek: Yes. I would like to offer the letter to show that the services of Gould & Preisner were terminated by Doose & Lintner through the ordinary channels of the mail which is a very essential element which we have to prove in our case.

Mr. Williams: We further object. That is a simple fact which could be stated by any witness without placing in the

record any such highly inflammable and prejudicial communication as one of these is.

Mr. Fousek: The quality of the document has nothing to do with its materiality.

Mr. Williams: The courts proceed by the best evidence. The best evidence here in court is the witnesses that are here present.

53 Mr. Fousek: A written communication is surely good evidence.

Mr. Mahoney: Certainly not against the persons you are attempting to admit it against who never wrote the document—who never wrote the letter and didn't reply to it, surely.

Trial Examiner Bellman: Let me read the letter, please. As I understand it, the Board is offering these not to substantiate the truth of the various contentions made in the complaint?

Mr. Fousek: Oh, no.

Trial Examiner Bellman: But only as the actual correspondence exchanged in the course of business?

Mr. Fousek: That is the fact, itself. Now, what is in, or may have been asserted within those letters is of no consequence whatsoever.

Mr. Mahoney: If that is their purpose, we again renew our objection to both exhibits, if what they say are true, as the witnesses are here, and they can both testify that there was a cessation without going into wholly immaterial facts and statements and self-serving declarations, and also bitter criticisms of the respondents herein that had no part with it, and under the rules of evidence, it wouldn't be admissible. We follow the rules of evidence here as used in Federal Courts in this country—

54 Trial Examiner Bellman: I believe the documents are admissible for the purpose stated. The objection is overruled, and exhibits are admitted in evidence as Board's Exhibits 2 and 3.

Mr. Mahoney: To which we desire to save an exception.

Trial Examiner Bellman: You have automatic exceptions all the way through.

Mr. Mahoney: All the way?

Trial Examiner Bellman: You can just save that much record if you are willing to take it as automatic.

Mr. Mahoney: Very well.

(Thereupon the letters above referred to, previously marked as "Board's Exhibits Nos. 2 and 3, Witness Gould," for identification, were received in evidence.)

Q. (By Mr. Fousek) As of this date, have you completed the work for Doose & Lintner? A. We have not.

Q. Do you know an individual named Jerry LoSasso? Who is Jerry LoSasso? A. Jerry LoSasso is the son of Tony LoSasso, a contracting builder whose operations are largely in north Denver.

Q. Do you recall whether or not in October, 1947, you entered into any arrangement with LoSasso to perform electrical work for them? A. Yes, we did.

Q. When did you do so? A. Why, I believe that, 55 our contract to do that electrical work on a project for three houses at 45th and Tejon, I believe we entered into that arrangement the latter part of August, or the forepart of September and in the early part of November started to work on the—to do the electrical work on that project.

Q. And what did the electrical work consist of? A. It consisted of a complete wiring job, the installation of the necessary conduit panel boxes, steel tubes, switches and receptacles and hanging of the fixtures for a complete electrical job for the people to move into the house.

Q. Did you perform services on all of the three homes? A. Yes, we did, sir.

Q. What was that address again of the homes? A. They were 45th and Tejon, I believe they were—

Q. Was it 2001? A. 2001.



Q. 51 A. 2005 and 2015 West 45th Avenue.

Q. Did Mr. Losasso perform contracting work in other areas? A. Yes, we had previously wired a block of houses up at 45th and Zuni, and at the time that we were doing our first wiring, the preliminary wiring, or roughing in, as we call it, on these houses at 45th and Tejon, he had another job in the process of completion on West 40th Avenue, either West 40th or West 41st, a short distance away.

Q. Now, you say you began work approximately November 1st? A. Yes, sir.

Q. Did you send employees to the houses? A. Yes, two of them.

Q. When did you send them there? A. About the first of November.

Q. Did you complete that work? A. Yes, sir.

Mr. Fousek: That is all.

Q. (By Trial Examiner Bellman) About when did you complete that work? A. I believe we got final inspection on that along in February 1948.

Q. When did your employees last work on the job there? A. Probably in February, 1948.

Trial Examiner Bellman: If the charging company wishes to address any questions to the witness, I should like to have those questions addressed before cross-examination. Do you have any questions of the witness on behalf of the charging company?

Mr. Fousek: The attorney for the company apparently has left, sir.

Trial Examiner Bellman: I didn't notice his absence in the room. Did he make any request at all?

Mr. Fousek: No.

57 Mr. Mahoney: I want—

Trial Examiner Bellman: You have cross-examination, of course. I am just trying to clear up the ques-

tion as to whether the attorney for the charging company has any questions.

Mr. Preisner: He said he thought he would be here at two-thirty, and you see it is three o'clock and he hasn't arrived.

Trial Examiner Bellman: You are—

Mr. Preisner: I am his father.

Trial Examiner Bellman: Mr. Preisner. Anyway, there is no objection to going on. I didn't notice the absence of counsel. You may cross-examine. If you gentlemen will work it out among yourselves as to which order you would like to follow with any given witness, I think that probably would be the most expeditious procedure, questions by any one of you, and the objections can be recorded as going to all of this proceeding.

Mr. Mahoney: Very well, Mr. Examiner.

#### Cross-Examination

Q. (By Mr. Mahoney) Your name is Earl C Gould? A. It is.

Q. You are the same gentleman that testified in Judge Symes' court the last few days in the application for an injunction? A. I am.

Q. Mr. Gould, you have in this city a warehouse, have you not? A. We have.

58 Q. And in that warehouse, the materials, the electrical fixtures and materials that you have just testified to a few moments ago, they come in in transit and they are placed in your warehouse, is that correct? A. That is right, sir.

Q. And then from that warehouse, they are sold into different places in the city, or shipped out as may be? A. That is right.

Q. And these materials came in in the ordinary flow of commerce and were not interfered with in transit coming into Colorado and into the warehouse? A. Of that I have no direct knowledge, but at least, we received them.

Q. No direct knowledge of any interference or stoppage of that electrical material coming into your warehouse, is that correct? A. We received the merchandise.

Q. Yes. And then from that warehouse, the merchandise was placed as was necessary under contracts, or it would be piled up and then in turn it would be sent out to different specific jobs, is that correct? A. Yes, sir.

Q. You also have a plant processing, or manufacturing, in connection with the business, is that correct? A. Yes, sir.

59 Q. And some of these materials that came in from outside the state, did you perform services upon them, or processing work upon them? A. Yes, sir.

Q. And you had employees do that, is that correct? A. That is right.

Q. And there was no strike, on behalf of anybody at your plant in any way attempting to prevent the processing of those goods, is that right? A. That is true, sir.

Q. By these respondents, or any other union that you know of? A. That is right.

Q. Now then, at that warehouse where these goods were located, these materials that you have heretofore mentioned, those were taken out of the warehouse and delivered by truck to the different places, is that correct? A. That is right, sir.

Q. And the respondents, or no other union that you know of at this time attempted to prevent the free transit of those materials from your warehouse out to the different avenues of trade, is that correct? A. That is true.

Q. In other words—you also manufactured certain materials there; I believe you said something like a sprinkler in your plant there? A. That is right.

60 Q. And that plant wasn't struck by the respondents? In other words, no picket was placed around either your plant or your warehouse? A. There has been no work stoppage.



Q. And then some of the materials that came in, there was no black list on the use of any of those materials that came in, is that correct? A. That I don't know about, sir.

Q. You don't know of any, do you? A. No, sir; I don't know of any.

Q. And your materials have been used by the unions in their different line of work as well as the non-union men, is that not correct? A. I don't know about that.

Q. But you know of no black list. I believe you heretofore stated in Federal Court if there was any black list of your materials, you knew of none, is that correct? You testified to that? A. Since I made that testimony, there has been something came to our attention whereby I believe that there has been a little black listing, but I testified in Judge Symes' court, that up to that time; yes, that is right.

Q. And that you stated in the Court there that there had been no stoppage from the useage of that product of yours, is that not correct? A. That is right.

61 Q. Yes, sir; there had been no black list and that was your testimony in Judge Symes' court? A. Up to that time; yes, sir.

Q. Is that right? A. That is right.

Q. And your warehouse has not been picketed at any time, has it? A. Not to my knowledge.

Q. Nor any of your manufacturing plants where you sold these sprinklers? A. That is right.

Q. And neither your warehouse nor your plants at any time have been picketed, is that correct? A. That is right.

Q. Now then, at the time when you were doing some construction over on Bannock Street, doing some electrical work, now the materials that came in for that electrical work, they came in and were placed in the warehouse, were they not, and in bulk came mainly in in transit? A. For the most part that is true.

Q. For the most part that is true, and some of them were made here in Denver? A. As far as I know, there was no

62 materials made locally with the possible exception of nails.

Q. And none of those materials—they weren't ordered for these specific jobs, were they? They were sent, first, to the warehouse? A. Well, in the merchandise—we had types of merchandise, which is still tough to get, and it could be that material—

Q. I am not asking you now what could be. I am asking you if it wasn't true that you ordered these materials and they were in the warehouse and then as the jobs needed them, these materials were sent out? A. Will you repeat that question?

Trial Examiner Bellman: Read the question.

(Last question here read by the reporter.)

A. No, that is not one hundred percent true.

Q. (By Mr. Mahoney) All right. Didn't you say the other day when you testified, either the 29th or the 30th in Judge Symes' court that none of the materials of these two jobs were ordered specifically for either one of these jobs, and they were not specifically sent to these jobs, but they were taken out of stock in the warehouse, isn't that your testimony? A. I did; I made that statement.

Q. Is that true? A. Yes, but—

63 Q. Yes. A. There was a shortage of steel boxes and those steel boxes were never even got into our warehouse, they were so hard to get ahold of, that the minute they landed they went down onto the Bannock Street job.

Q. You didn't tell the Court that the other day, did you? A. I wasn't asked to tell it.

Q. The question was any of these materials, and you said no, none of it was ordered specifically for the Bannock Street job, or the LoSasso job, did you not? A. Yes, sir; I made that statement and I still stick to that statement.

Q. All right. Now, with reference to this \$2300, now, you say half of that is labor? A. Approximately half.

Q. Would you give me the list of the men on the jobs, and show the pay that he got? A. I haven't those figures before me.

Q. Would you get those figures for us? A. Yes, sir.

Q. How many men did you have on the job? A. Oh, we had from two, to, I believe at one time, we had six.

Q. How much a day did you pay them? A. We paid them at the rate of \$1.62½ an hour.

Q. How many days did you work on that job? A. I cannot recall from memory.

64 Q. Can you give me any accurate amount as to how much wages you paid them? A. I cannot at this moment.

Q. Can you give me any accurate amount as to how much materials? A. At this moment, I cannot.

Q. Can you break that down, that \$2300 that you testified to here and give us how much materials went in on top of that? A. That \$2300 is—that was for the completed job.

Q. I understand, and how much do you claim that you performed on it now? A. Approximately 45 percent.

Q. 45 percent. All right. Now, would you bring us in a statement of how much materials are and your labor on that job which you figured out when you figured out the contract? A. If this gentleman here instructs us to.

Q. Well, we are asking that you bring them in.

Trial Examiner Bellman: I think it is proper cross-examination.

A. Yes, I will bring them in. Yes, we will bring them in.

Q. And also on the LoSasso job, how much did you say that job was? A. I didn't say.

Q. How much materials went into that job? A. I don't know.

65 Q. Can you tell us—have you those figures when you figured that contract? A. Yes, I have got those figures, but that job was all paid for. It is out of the way—

Q. I am not asking you whether it was paid for or not;



I am asking you how much materials went into that job? You figured the contract. You can tell us that. A. I don't think it is any of your business what went into that job.

Mr. Fousek: Just a minute. You answer the questions.

Mr. Mahoney: I ask you instruct the witness that I have a right to ask these questions.

Trial Examiner Bellman: Unless objections are made by counsel for the Board on these matters, you may answer the question. You indicated you have the information available and he asked you to get it, and then after it is in, it is up to me to rule.

The Witness: I can get that information.

Q. (By Mr. Mahoney) Will you bring that information in? A. I will.

Q. When can you have it? Tomorrow morning? A. I will try.

Trial Examiner Bellman: Did you on direct examination go into that question?

Mr. Fousek: I went into the value of the materials.

66 Trial Examiner Bellman: On the second of the projects?

Mr. Fousek: No, I did not.

Trial Examiner Bellman: I think the figures could well be in the record. I think you are a little outside of the technical scope of the direct examination, but it is within the field, so the witness may bring in the information.

Q. (By Mr. Mahoney) How many of your employees belong to the union? A. None, as far as I know.

Mr. Mahoney: That is all. Counsel have a few questions.

Q. (By Mr. Hornbein) You said you have 28 employees, Mr. Gould? A. Yes, sir.

Q. How many of those are engaged in the production of your water sprinkler?

Mr. Fousek: I object to that as immaterial and irrelevant; nothing to do with the issues in this proceeding.

Mr. Hornbein: Your Honor, they brought that out.

Trial Examiner Bellman: The objection is overruled.

A. At the present time none.

Q. (By Mr. Hornbein) How many during 1947? A. It would depend upon the season of the year.

Q. Now, let me ask you this, Mr. Gould, do you segregate your operations between your manufacturing and your electrical work on different buildings in Denver? Do you  
67 keep two separate sets of books for those operations? A. No, I do not.

Q. Do you have separate employees for those operations? A. Yes, we do.

Q. How many have engaged in the manufacturing process? A. Three.

Q. Just three? A. Yes.

Q. Who are they? A. Mr. Calvert, Ray Harris and a fellow by the name of Carper.

Q. Now, all the rest of your employees, besides your clerical help are engaged in the electrical repair and maintenance and construction in Denver and surrounding territories, is that right? A. That is right.

Q. Are not engaged in the processing or manufacturing or production for sale? A. That is right. I might add that when it is necessary to make a bearing to repair an electrical motor, one of the three—the machinists will be taken off of whatever he is doing and make that bearing.

Q. Do these three employees get the same rates of pay as the other employees? A. No, sir.

68 Q. How much do these get?

Mr. Fousek: I object to that as being incompetent, irrelevant and immaterial.

Mr. Hornbein: In a labor dispute, wages are always vital.

Mr. Fousek: It has no bearing.

Trial Examiner Bellman: Sustained.

Q. (By Mr. Hornbein) You testified you paid \$1.62 to the men working on the Bannock Street job? A. Yes, I testified we paid the journeymen \$1.62½.

Q. How much did you pay the apprentices? A. Would depend upon what year apprentices they were.

Q. How many apprentices did you have working out there?

Mr. Fousek: I object to that as being incompetent and irrelevant.

Trial Examiner Bellman: There is testimony in the record on that. I will permit the question.

Mr. Hornbein: I didn't hear you.

Mr. Fousek: He said he would permit the question.

Mr. Hornbein: I didn't hear the witness.

The Witness: If he is through arguing, I will answer. We have a helper for every journeyman.

Q. (By Mr. Hornbein) One apprentice for each journeyman? A. Yes, sir.

Q. How many men did you have working altogether on the Bannock Street job? I think you have answered that, but give me the figure again. A. I stated that for the most part, we had a man and a helper.

Q. Altogether, you had two to six men on the Bannock Street job? A. That is right.

Q. Half of whom were apprentices? A. That is right.

Q. You don't know how much you paid them? A. No.

Q. It was at least \$1.62? A. Yes, sir.

Q. What was the total value of the goods turned out by these three men? A. I don't know.

Q. You can get your figures, I presume? A. If it is important.

Mr. Fousek: I object to that. I think it is immaterial, the total value.

Mr. Mahoney: You went into all of it.

Trial Examiner Bellman: Just a minute. If you gentlemen will stop arguing with each other—

Mr. Mahoney: Very well.

Trial Examiner Bellman: And address any objections or argument to the trial examiner, I would appreciate it. You want to know the total value of the goods



manufactured by these three employees who have been named, is that correct?

Mr. Hornbein: Yes, sir.

Trial Examiner Bellman: I think it is material. The objection is overruled. The witness will furnish that information.

Mr. Hornbein: Also, we want the witness to furnish what proportion of that total value was for the outside of the state of Colorado.

Trial Examiner Bellman: Are you talking now again about manufactured products?

Mr. Hornbein: Manufactured items. That is all that could possibly be shipped out.

Trial Examiner Bellman: All right. Will you get that information also? The value of the manufactured items and that part of those products which were shipped out of the state of Colorado.

Mr. Hornbein: If Your Honor please, I would like to have also for the record the exact value of the work done for Continental Air Lines, Standard Oil, Continental Oil, and the Texas Company. He testified as to that, but he said he didn't know exactly what it was. His testimony was based on conjecture.

Trial Examiner Bellman: Do you have records kept for those companies for the year, for the year of 1947?

71 The Witness: No, sir.

Trial Examiner Bellman: How are your records kept?

The Witness: Well, they are kept by the month.

Trial Examiner Bellman: Well, you can assemble them for the year 1947?

The Witness: It will be quite a job, but we can do it.

Trial Examiner Bellman: The testimony you gave was for that year, was it not?

The Witness: Yes, sir; 1946 and 1947.

Trial Examiner Bellman: Were you giving an average of the two years?

The Witness: An average for the two years.

**Trial Examiner Bellman:** I didn't understand the testimony that way. Suppose you search your records for the year 1947 as to these firms which you gave testimony about and give us the most accurate information you can on that subject.

**The Witness:** All right, sir.

**Mr. Hornbein:** We can go ahead.

**Mr. Preisner:** Mr. Hornbein, would you give me the names of those companies?

**Trial Examiner Bellman:** Will be off the record.

(Discussion here had off the record.)

**Trial Examiner Bellman:** On the record. Witness has been given the names of the four companies off the record and counsel for Gould & Preisner have taken that information down. The witness is instructed to get us the  
72 most reliable information possible as to the figures which he testified about presently.

**Q. (By Mr. Hornbein)** After this interchange of letters between Doose & Lintner, you went right ahead working on the Bannock street project, did you? **A.** Yes, sir; we did.

**Mr. Hornbein:** That is all.

**Q. (By Mr. Williams)** During the time this dispute has existed, Mr. Gould, nothing has been done out there to interfere with the drivers of your trucks, or delivery of materials to job sites? **A.** Absolutely none.

**Q. Nothing? A. Nothing.**

**Mr. Williams:** That is all.

**Mr. Fousek:** Just a moment, sir.

### *Redirect Examination*

**Q. (By Mr. Fousek)** Now, Mr. Gould, you said that after you testified in the court proceeding, you discovered that you had taken some boxes directly from shipment which didn't get to your warehouse and took them directly to the Bannock Street job? **A.** Well, we received a lot of merchandise, and I may be a little hazy on this, but it strikes me there was some square boxes that are extremely critical, very difficult to get, and I believe we received a

73 shipment of square boxes and that the—within fifteen minutes after they landed at our place, they were on their way down to the Bannock Street job. That may or may not be important.

Mr. Mahoney: I move to strike that answer for the reason he said they landed on his dock and were then sent down; just the same as being in the warehouse, simply the fact a box landed at his warehouse and went out on the job.

Trial Examiner Bellman: Did they, as far as you can remember now, go into the warehouse?

The Witness: It is my honest recollection that they did not go into the warehouse.

Trial Examiner Bellman: Did you order that particular material specially and specifically for either one of those jobs?

The Witness: No, sir.

Trial Examiner Bellman: All right. Proceed.

Q. (By Mr. Fousek) Now, you said that after you received this communication from Doose & Lintner, you continued to work? A. Yes, sir.

Q. How long did you continue to work; how many days; how many hours? A. Why, I don't know how many days or how many hours. Our records will show.

Q. Give me your best recollection of the number of days? A. I guess about ten days.

Q. Then, what happened on the 10th day? A. Well, the 10th—by the end of the ten days, Doose & Lintner got the bright idea—

Q. Just tell me what happened. A. The doors and windows were barricaded and we were denied entrance to the property.

Mr. Mahoney: We desire to object to that. The proof doesn't show any of these respondents barricaded the doors and windows; none of them; none of the unions.

Trial Examiner Bellman: Objection is overruled.

Mr. Mahoney: Save an exception.

Mr. Fousek: That is all.

Mr. Mahoney: That is all.



*Recross-Examination*

Q. (By Mr. Hornbein) You said, Mr. Gould, that along about September 26th, this was on your original examination, that your partner showed you a contract with Doose & Lintner? A. Yes.

Q. And I think you pulled something out of your pocket purporting to be a contract? A. Yes, would you like to see it? (Paper handed to counsel.)

Mr. Hornbein: Mark that as an exhibit.

The Witness: If it please—we would like to furnish a copy of that. We want that thing back.

75 Mr. Hornbein: O. K. You want to make a photostatic copy of this, that is all right.

Trial Examiner Bellman: Photostatic copies can be substituted for any documents.

The reporter has been handed a document, and I understand you are asking her to mark that as respondents' exhibit?

Mr. Hornbein: Correct.

Trial Examiner Bellman: Do the respondents want to have one series of exhibits for the respondents, jointly?

Mr. Hornbein: Yes, sir.

Trial Examiner Bellman: Each of you have answered jointly?

Mr. Mahoney: Yes.

Trial Examiner Bellman: It is agreeable to all respondents?

Mr. Mahoney: Yes, sir.

Mr. Hornbein: Yes, sir.

Mr. Williams: Yes, sir.

Trial Examiner Bellman: All right. It appears to be agreeable to all respondents, so there will be one series of exhibits marked respondents' exhibits.

(Thereupon document above referred to, was marked as "Respondents' Exhibit No. 1, Witness Gould," for identification.)

Q. (By Mr. Hornbein) Can you identify Respondents' Exhibit No. 1? A. This is the original of a bid or proposal which is on a form which Gould & Preisner use for the purpose of submitting a bid or proposal. It is dated 9/25/47, and the name is Doose & Lintner. The address of the job is—

Q. You don't have to read it. In whose writing is that, Mr. Gould? A. John Preisner.

Q. Now is Respondents' Exhibit No. 1 that which you previously had referred to as a contract? A. Bid, contract, or bid; yes, sir.

Q. Is this the only thing you have in the way of a contract with Doose & Lintner? A. As far as I know, it is.

Mr. Hornbein: If Your Honor please, we would like to offer Respondents' Exhibit No. 1 in evidence. I don't know whether you want us to make our—offer our exhibits now or wait until we put on our case, but anyway—

Trial Examiner Bellman: There is no objection as far as I am concerned to exhibits being offered at this time—at the time they are identified. Any objection to this document being received in evidence?

Mr. Fousek: No, with the understanding the individual receive the original back.

Mr. Mahoney: If you make a copy, will you make a photostatic copy for each of us?

Mr. Fousek: The burden is on you gentlemen to provide two copies for the file.

Mr. Mahoney: If we consent for withdrawal of the original—we will insist on the original being left in the file. We are only doing that as an accommodation.

Mr. Fousek: I just simply didn't want to have to assume the burden of making copies in order to provide our witness with his document when the parties themselves can provide copies. Their facilities are greater than my own.

Trial Examiner Bellman: I think it would be reasonable procedure since you asked for the document, and it was requested to be returned to the witness, for you to furnish photostatic copies for the record.

Mr. Williams: May we have custody of that so we may make photostatic copies?

Trial Examiner Bellman: You may arrange to borrow the original from the official reporter and by giving a receipt to the official reporter in the customary fashion, you may have the original from which to make photostatic copies, and for the record furnish photostatic copies, two in number, of said document, and return the document in its original form in due course. Let's proceed.

Mr. Mahoney: To which we save no exception.

Trial Examiner Bellman: Document is admitted as Respondents' Exhibit No. 1, photostats to be substituted.

78 Mr. Mahoney: That is all as far as we are concerned, with this witness.

(Thereupon document above referred to, previously marked as "Respondents' Exhibit No. 1, Witness Gould," for identification, was received in evidence.)

Trial Examiner Bellman: Anything further with this witness until the witness is ready to resume the stand with the information requested?

Anything further?

Mr. Fousek: Nothing further.

Trial Examiner Bellman: Witness is excused subject to recall at the time the information is received.

(Witness excused.)

Trial Examiner Bellman: Hearing is in recess for five minutes.

(Whereupon a short recess was taken.)

Trial Examiner Bellman: The hearing will be in order. Call your next witness.

Mr. Fousek: Mr. Lintner, will you take the stand, please?

Louis Lintner, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:



*Direct Examination*

Q. (By Mr. Fousek) Would you give your name, spelling it, please, and your address to the reporter. A. Louis  
79 Lintner, L-i-n-t-n-e-r; 4835 Grove.

Q. What business are you engaged in, Mr. Lintner? A. Contracting business.

Q. What is the name of the business? A. Doose & Lintner Construction Company.

Q. What is the nature of the business organization? A. Constructing buildings and houses.

Q. Is it a partnership? A. Yes.

Q. What is the name of your partner? A. William Doose.

Q. How long have you been in that business? A. Oh, about three years, together.

Q. Did you enter into arrangements for the purpose of building a building known as the Chapman Building on Bannock Street? A. That is right.

Q. With whom did you enter into those arrangements? A. The Chapman brothers.

Q. Of your own knowledge, do you know the purpose for which the building was to be used? A. Oh, winding armatures, and starters and offices.

Q. By whom was the building to be occupied?

Mr. Mahoney: I object to that. It is immaterial who occupied the building, no bearing one way or the other in the case; no allegation that any occupants interfered;  
80 purely immaterial.

Trial Examiner Bellman: The objection is overruled.

The Witness: What was the question, please?

Q. (By Mr. Fousek) By whom was the building to be occupied? A. After it was partly under construction, it was leased to Clawson & Bals, Inc., Chicago.

Q. Would you tell the Examiner the method by which you operated in constructing that building? Did you do the work yourself, with your own employees, or did you

subcontract some of it? A. Subcontracted some of it, yes.

Q. What part of the work did you subcontract? A. The brick work and the cement work and the steel work and the electrical—no, excuse me, we didn't sublet the electrical all together.

Q. What about the plumbing? A. The plumbing we did, yes.

Q. How did you—what arrangements did you make for the electrical installations? A. Well, at the time, they didn't know how much, or how many outlets, or how much electrical work they wanted completed, so we just left that open.

Q. Did you enter into an arrangement with Gould & Preisner to do certain electrical work? A. We asked them to put in one feeder so we could pour concrete.

81 Q. Was a bid submitted on that? A. No.

Q. Handing you a document which has been marked for identification as Respondents' Exhibit No. 1, did you ever see that document? A. No, sir.

Q. With whom did you have your discussions which were preliminary to securing the services of Gould & Preisner? A. Repeat that again, please.

Mr. Fousek: Would you read that question back, please?

Trial Examiner Bellman: Off the record just a minute.  
(Discussion here had off the record.)

Trial Examiner Bellman: On the record.  
(Last question here read by the reporter.)

A. Well, I just can't—

Mr. Hornbein: I don't know if he stated there has been any discussion.

Mr. Hornbein: We object to that question, Your Honor; it is leading and suggestive.

Trial Examiner Bellman: I will sustain the objection. Lay your foundation.

Q. (By Mr. Fousek) Would you relate to the examiner the methods by which Gould & Preisner, their services were secured? A. By us?

Q. Yes. A. Well, it is like I stated before, we just asked them to put in this one feeder.

Q. Who did you ask? A. John Preisner.

Q. So you did have a discussion with John Preisner? A. On that one item; yes, sir.

Q. What was that item again? A. It was a feeder so we could pour the concrete floor, about fifteen feet long, I imagine.

Q. What is a feeder? A. It is a piece of pipe with a wire through to lead to an outlet, or something. I really don't know.

Q. Did you discuss with Mr. Gould or Mr. Preisner the doing of any other work by him for you? A. We gave them an opportunity to bid on the work.

Q. And did they make a bid? A. They made a bid to Clawson & Bals that I know of. I have a record of that.

Q. Did you ever see a carbon copy of the document that has been marked Respondents' Exhibit No. 1 A. No, sir.

Q. You never seen that before? A. Absolutely not.

83 Q. Now, do you know whether or not Mr. Preisner, or Mr. Gould entered into any arrangement with the other prospective tenants as to the location of outlets and so forth?

Mr. Mahoney: We object to that, whether he did or didn't doesn't have any materiality in this case.

Trial Examiner Bellman: The objection is overruled.

The Witness: Will you repeat that again, please?

Mr. Fousek: Read the question back, please.

(Last question here read by the reporter.)

A. They submitted a bid to Clawson-Bals and which was turned down and they had a set of plans for that portion of the building from Clawson-Bals.

Q. (By Mr. Fousek) When did Clawson-Bals begin the work on the building which you have mentioned? A. I believe it was—it was either the day that the picket come one the job or the day before.



Q. Now, do you recall the approximate date that that occurred? A. Just a minute. Before that, they had put that feeder in. You mean the second time?

Q. Gould & Preisner were working after the feeder line had been put in? A. They come down there.

Q. What were they doing? A. He come down to put the electrical wiring in.

Q. Did you see him at that time? A. Yes, sir.

84 Q. Did you discuss the matter with Gould & Preisner where some additional work should be done? A. Well, all of my discussions were with Mr. Preisner. It was on—trying to get some business from him for these different tenants that was running the building. He was given the opportunity to bid on it.

Q. When was the feeder line finished? A. I don't know that date.

Q. Can you recall the first day that Gould & Preisner began work on your job? A. On the feeder?

Q. On anything? A. No.

Q. They were working there prior to the time the picket was established? A. Just that one day they put the feeder in.

Q. They worked there only one day before? A. Yes.

Trial Examiner Bellman: Did it take only one day to put the feeder in?

The Witness: Just a short piece of pipe.

Trial Examiner Bellman: That is not my question. Did it take only one day to put the feeder in?

The Witness: I don't suppose it took a day.

85 Trial Examiner Bellman: Do you know about when that was?

The Witness: No, I don't.

Trial Examiner Bellman: Have any idea whether it was in December or November or October or January?

The Witness: Well, it was in the early part of construction; I really don't know.

Trial Examiner Bellman: When did the construction start?

The Witness: You could ask my partner that; I don't really recall the date.

Trial Examiner Bellman: Do you have any independent recollection of approximately when the construction started?

The Witness: He can verify that. I really don't know. September—September some time.

Trial Examiner Bellman: Now, do you have any idea how soon after September this feeder was put in, approximately?

The Witness: Approximately a month and a half.

Q. (By Mr. Fousek) You mean it took more than a month and a half to do that job of putting in that one little bit of a feeder line? A. No.

Q. They just came there one day then in that entire period of time? A. That is right.

Q. Do you recall on or about January 8, 1948, having a conversation with Clifford Goold? A. Yes.

Q. That is G-o-o-l-d? A. Yes, sir.

Q. Who is Clifford Goold? A. He is the president of the building and trades council.

Q. And Jack Fisher? A. Yes.

Q. And M. P. McDonough? A. No, I didn't have any conversation with him.

Q. Now, you did have a conversation on January 8th with Clifford Goold and Jack Fisher? A. That is right.

Q. Now, where did that conversation take place? A. 1068 Bannock.

Q. What time of the day was it? A. Around ten o'clock.

Q. Were the employees of Gould & Preisner working on the Bannock Street job on that day at that time? A. I don't believe so; I don't know for sure.

Q. You don't recall? A. Not exactly the day.

Q. Were they working the day before? A. No.

Q. What was the subject matter of the conversation on January 8th? A. Well, they just asked me if this job was union, and I told them it was.

Q. And what, if anything, was said about the electrical work? A. Oh, he asked who was going to do the electrical work and I told him I didn't know for sure; I thought maybe Preisner would have a chance to get it.

Trial Examiner Bellman: Who was talking?

The Witness: Fisher.

Trial Examiner Bellman: He asked you what?

The Witness: He asked me who was going to do the work on that job, and I told him Gould & Preisner were going to have a chance to bid on it and might do it.

Q. (By Mr. Fousek) You say that Mr. Mike McDonough wasn't present at that conversation? A. I didn't even know who he was until two or three days after this discussion.

Q. Didn't you testify that Mr. McDonough was present at that conversation in the court proceeding? A. I don't believe I did. If I did, it was a mistake.

Q. What was said, if anything, about the Gould & Preisner employees by Mr. Fisher or Mr. Gould? A. Nothing was said about the employees.

Q. What was said, if anything, about non-union employees working on that job? A. We discussed that; that they were a non-union shop.

88 Q. You discussed that with whom? A. Fisher.

Q. Fisher and Mr. Gould that Gould & Preisner were non-union? A. Yes.

Q. And what did they tell you about that? A. Well, they just reminded me that the two crafts couldn't work together, non-union and union men.

Q. Did you have any other non-union employees, or subcontractors on that job? A. No, sir.

Q. What, if anything, was said about a picket? A. Well, the only thing that Mr. Gould told me that he would have to notify his members that with respect to non-union men working on the job.

Q. How did he say he would have to notify his members? A. By picketing.



Q. What did you tell them, if anything? A. Of course, I tried to talk them out of it.

Q. How long did the conversation take? A. Oh, fifteen or twenty minutes.

Q. Was Mr. Doose around at any time? A. Yes.

Q. What did Mr. Doose have to say, if anything?

Mr. Hornbein: We object to what Mr. Doose said unless it was brought out that it was in the presence of some  
89 of these men.

Mr. Fousek: Yes, of course.

Q. (By Mr. Fousek) In the course of these conversations—

Mr. Mahoney: Mr. Doose is here and he can testify as to what he said.

Trial Examiner Bellman: Anything said in the presence—as part of this conversation is permissible.

The Witness: Well, we weren't together. I was talking to Gould and Mr. Doose was talking to someone else there.

Q. (By Mr. Fousek) Who was Mr. Doose talking to, do you know? A. Well, I don't really know who it was.

Q. How did the conversation end? A. Well, it just ended friendly if that is what you mean.

Q. Were you informed as to anything that was going to happen on the following day? A. Yes.

Q. What was said? A. They said they would have to notify their men the next morning to picket there.

Q. Who said that? A. Mr. Gould.

Q. Did the picket appear the next morning? A. Yes.

90 Q. Do you know his name? A. No, I don't.

Q. Did he carry a sign? A. Yes.

Q. Substantially, what did the sign say? A. Well, I just don't recall.

Q. Did it say that this job is unfair—

Mr. Mahoney: We object to that, leading and suggestive; the witness said he didn't recall.

Trial Examiner Bellman: I might point out that this particular thing is all admitted in the complaint and in the

answer. I don't like to spend time on matters that are not in issue.

Mr. Mahoney: Then it is immaterial; it has already been admitted.

Q. (By Mr. Fousek) Showing you a document which has been marked for identification as Board's Exhibit No. 2. Did you write that letter? A. Yes, sir. I copied the letter.

Q. Do you know if Mr. Clifford Goold saw that letter? A. I showed it to him after our attorneys—

Q. When?

Mr. Mahoney: Let him answer the question. He cut him off before he completed it.

Mr. Fousek: He had completed the answer. He was volunteering some other information.

91 Mr. Mahoney: No.

Trial Examiner Bellman: Read the record.

(Last two questions and answers here read by the reporter.)

Mr. Fousek: I asked him if he knew Clifford Goold had seen the letter, and I think I am correct—

Mr. Mahoney: And he wanted to answer and you cut him off.

Mr. Fousek: He did finish his answer.

Trial Examiner Bellman: Complete your answer.

The Witness: I beg your pardon.

Trial Examiner Bellman: Complete your answer.

The Witness: Our attorneys advised us to write this letter to Gould & Preisner and also that we were—

Mr. Fousek: I think he has answered my question. They are perfectly free to cross-examine him as to the circumstances.

Trial Examiner Bellman: All right. You are referring now to Board's Exhibit 2?

Mr. Fousek: That is right.

Q. (By Mr. Fousek) How long did a picket continue to be in front of your construction site at the Bannock Street project, sir? A. Oh, approximately two weeks.

Q. With reference to the time of January 22d, when was the picket removed? A. I believe the following day.

92 Q. When was the day that you showed this letter to Goold? A. Must have been on January 21st, according to the letter.

Q. (By Trial Examiner Bellman) Did you show it to him before the date on the letter? A. No, the same day.

Q. The same day as the date on the letter? A. That is right.

Q. (By Mr. Fousek) Now, with reference to January 8, 1948, on the day when you discussed this matter with Goold and Fisher, what crafts were working on the job? A. I believe it was the plumbers and carpenters; I believe that is all.

Q. Were there any cement workers there? A. No, sir.

Q. Had the job been completed in so far as the cement workers were concerned? A. No, it wasn't ready for the cement.

Q. The plasterers? A. No, sir.

Q. There were no plasterers there? A. No, sir.

Q. The job wasn't ready for the plasterers? A. That is right.

Q. Were there any common laborers there? A. Not that I recall.

93 Q. After the picket was placed on the job, what employees reported for work? A. I just don't remember that.

Q. Can you recall if any employees reported for work? A. It was rather late in the morning when I got down to the job.

Q. Were there employees working? A. It may be that the plumbers were working; I don't know.

Q. How long did the plumbers continue to work? A. They didn't.

Q. They didn't do anything? A. No.

Q. Just came and got their tools? A. Yes, sir.

Q. Were there any carpenters who continued to work?

A. No, they weren't there.



Q. Were there any employees? A. I would like to finish—

Q. I am sorry. I thought you were done. A. We had another job and we sent the carpenters out on that the night before, as I recall it. They weren't on the job when the picket was there.

Q. Was any work performed on that building on the day the picket was placed there up until the day the picket  
94 was removed? A. No.

Q. After January 22d, when did the employees report for work, January 23d being the day the picket was removed? A. They reported the following morning; I believe that is right.

Q. Now, during that period of time—

Trial Examiner Bellman: Just a minute. I want to be sure I understand your answer. When was the last time you saw the picket there, what day—on what day?

The Witness: I believe it was around January 22d. I don't just remember the exact day.

Trial Examiner Bellman: Was the picket there until some early hour of the day, or until the end of the work day?

The Witness: I really don't know.

Trial Examiner Bellman: When did people again come to work, at the beginning of the day?

The Witness: Yes.

Trial Examiner Bellman: Was it the day following the day upon which the picket left there?

The Witness: Yes, sir.

Trial Examiner Bellman: All right. Proceed.

Q. (By Mr. Fousek) Did you individually, or independently call the employees to go back to work? A. Yes. I just sent them down there; just regular routine; sending out on a job.

95 Q. What employees did you send down? A. The carpenters. I called several different crafts. I don't remember all of them.

Q. Who did you call? A. I called the heating man, Anderson.

Q. Whom? A. Anderson.

Q. Was he a subcontractor? A. Yes, sir.

Q. What did you tell Anderson? A. I just asked him if he would come down and start work on the building.

Q. Did you tell him the picket was gone?

Mr. Mahoney: That is objected to as being leading and suggestive.

Trial Examiner Bellman: Sustain the objection.

Q. (By Mr. Fousek) Just tell me everything you told him.

A. Well, I just called him and asked if he could get started on the building and he said he could.

Q. Was there any discussion at all entered into relative to the existence or non-existence of that picket? A. No, sir.

Q. You didn't tell him anything about that? A. No, sir; never.

Q. Was electrical work being done between January 8th and January 22d? A. Yes.

Q. Who was doing it? A. Gould & Preisner.

Q. What were they doing? A. Well, I never did know for sure.

Q. Weren't you in the building? A. Yes, off and on.

Q. What were the employees doing as you watched? A. They were putting boxes and outlets here and there, wherever they thought they should be.

Q. They were proceeding with putting in boxes and outlets? A. That is right.

Q. The feeder line had been completed? A. I don't know, sir.

Q. Now, during the period of time while the picket was on, did you discuss this matter with Mr. Preisner? A. Several times; I had tried to get him to withdraw from the job.

Q. Did you tell him why? A. I told him that he hadn't submitted the bid to these people and I didn't think it was fair for him to go ahead and run up a bill that they didn't want through us. He just deliberately went in and put those outlets in where he thought they should be.

97 Q. Did you ever advise him to that effect in writing? A. That is why I wrote this letter. I was trying—

Q. The letter you wrote was for the purpose of informing him that he hadn't submitted a bid? A. That was to inform him that we hadn't given him the contract to do that work. He just took it upon himself to do it.

Q. Now, you have previously done work with Mr. Preisner, have you not? A. Yes, sir.

Q. Had you on any other job made any other arrangement than what was entered into in this particular job? A. Yes.

Mr. Mahoney: I desire to object to that as being immaterial. The question is what was done on this job here that we are charged with in the complaint. What happened in other jobs, we are not charged with the other jobs.

Trial Examiner Bellman: The objection is overruled.

Mr. Mahoney: On another job; attempting to cross-examine his own witness.

Trial Examiner Bellman: Overrule both objections.

Mr. Mahoney: Save an exception.

Mr. Fousek: The objection was overruled, was it not?

Trial Examiner Bellman: That is correct.

Mr. Fousek: Would you reread the question.

(Last question here read by the reporter.)

98 Mr. Mahoney: I object to the question. It isn't clear; it is a double-headed question.

Trial Examiner Bellman: I will sustain that objection. Reframe the question. I think the intent of the question as I understood it was permissible, but I think it might well be clarified.

Mr. Fousek: I was trying to rephrase it, sir.

Q. (By Mr. Fousek) In your prior dealings with Mr. Preisner did you enter into the same type of arrangement?

Mr. Mahoney: Just a moment. Desire to object to that whether he did or didn't; it is immaterial what kind of arrangements he entered into with the—on former agreements, if any. It is an attempt to cross-examine his own witness.



**Trial Examiner Bellman:** The objection is overruled.

**Mr. Mahoney:** Save an exception.

**A.** Well, we had on other jobs, Mr. Preisner had considered, not just the services on some of these previous jobs where the owner had selected and bought his fixtures from other firms, and he has done portions of work at other times for us.

**Q.** (By Mr. Fousek) When he has done those portions of work, hasn't he entered into the same type of arrangement as here? **A.** No, I have always called him and asked him to come out and do the work.

**Q.** Have you ever secured from him a written contract signed by both parties? **A.** Most of these occasions he had—

**Q.** Just answer that question.

**Mr. Mahoney:** Object to that; it is immaterial.

**Mr. Fousek:** I think the record is quite clear that while Government has called this witness he is in the unfortunate position in which pressure can be placed upon him—

**Mr. Hornbein:** We object to that. There is nothing to show there is any pressure on this witness.

**Mr. Fousek:** It is quite obvious this person is in the middle—

**Mr. Hornbein:** There is nothing of the sort, Your Honor. This witness is a citizen of the State of Colorado and City of Denver, and is a man, a resident here who enjoys a good standing in the community, and I object to counsel for the Board making that kind of slanderous remarks, not only as to him, but as to any witness, that anybody would put pressure on a witness. In all the testimony in Federal Court, this witness testified as he has testified here and counsel can't claim any surprise. If he doesn't like his testimony, he shouldn't have called him to the stand and made him the Government's witness.

**Trial Examiner Bellman:** Will you read the question, please.

(Last question here read by the reporter.)

Trial Examiner Bellman: That has been objected to. I will overrule the objection. Answer the question.

100 A. The usual proceeding, we would—

Trial Examiner Bellman: Answer the question.

Mr. Fousek: Mr. Examiner—

Mr. Mahoney: Just a minute.

Mr. Fousek: I have asked a question that can be answered yes or no.

Trial Examiner Bellman: I have instructed the witness to answer the question. No need for argument. There has been a ruling on an objection. Proceed.

Mr. Mahoney: We don't wish—may I make a suggestion and objection here. I may say that the witness is not required, if it is impossible, to answer yes or no. Witness should be permitted, in all justice to the witness, to qualify his statements or make his own answer to it. He should not be bound in a straight jacket.

Mr. Fousek: I am perfectly willing that he explain any way he sees fit.

Trial Examiner Bellman: The witness has not been confined to anything except answering that question.

The Witness: I can't answer the question yes or no.

Trial Examiner Bellman: Well, answer it.

The Witness: In previous agreements that I have made with Mr. Preisner, I would take him directly to the owner of these buildings and he would give him his bid. That has always been the practice, and then he could decide how many outlets and how much cost he wants to put  
101 into that building, And I think Mr. Preisner knows that.

Q. (By Mr. Fousek) For any work which is done for you directly on your contract, has he ever submitted, or have you ever entered into a contract? A. On all the buildings that we constructed—we construct buildings on a cost-plus basis and the owner has the right to decide on how many outlets he wants in his building. I have left that up to Mr. Preisner and the owner.

Q. Did you leave it up to Mr. Preisner and the owner of this building? A. The owner—Mr. Preisner even mentioned the fact that I must be a miracle man to sell the building and give the man a bid, not knowing what the electrical work would cost. He said he would have to take his hat off to me, because he didn't know himself what it would cost. That is his very words.

Mr. Fousek: I move the answer be stricken as not responsive to the question.

Trial Examiner Bellman: Read the last question and answer.

(Last question and answer here read by the reporter.)

Mr. Mahoney: He told the conversation—

Trial Examiner Bellman: Deny the motion to strike. Proceed.

Q. (By Mr. Fousek) Did you take Mr. Preisner up 102 to the owner? A. Yes.

Q. Did hey enter into discussions? A. They did talk about it, yes. That is when he made that statement I just quoted.

Trial Examiner Bellman: You were quoting on that statement whom?

The witness: Mr. Preisner.

Q. (By Mr. Fousek) At the present time, do you employ any one on any of your jobs other than union labor, sir? A. No, sir.

Mr. Prisner: If Your Honor please, I have an important engagement in my office, but I would like an opportunity to cross-examine this witness in the morning if he is still going to be here.

The Witness: Your Honor, I would like to object to that. Mr. Prisner has been our attorney for the past two years, and I have discussed matters that I don't think it best for him to bring up.

Mr. Prisner: You don't care for the truth to come out.

Mr. Mahoney: Object to the remarks that are directed to this witness.



Trial Examiner Bellman: The witness is on the stand. If you want to stay here now and when the time comes for you to ask questions you may cross-examine and I will have to rule on whatever questions you may ask. But recalling a witness and then you will have to come in some  
 103 other time and you would have to state your reason for being unable to be here. I much prefer you to go ahead with the examination of this witness.

Mr. Prisner: Go ahead. I will cancel this engagement.

Trial Examiner Bellman: It will be much better for you to stay and take the witness in proper turn.

Mr. Fousek: That is all for the Board.

Mr. Mahoney: That is all.

Mr. Hornbein: Just one minute.

Mr. Mahoney: Mr. Lintner.

Trial Examiner Bellman: Has the Board completed its examination of this witness?

Mr. Fousek: Yes.

Trial Examiner Bellman: Do the respondents have any examination of the witness?

Mr. Mahoney: One or two questions, Your Honor.

Trial Examiner Bellman: Just a minute. Does the— I am sorry—~~does~~ the charging company have any examination?

Mr. Prisner: Yes, I do. I will wait until they get through.

Mr. Mahoney: Mr. Examiner—

Mr. Hornbein: We would like to renew our objection at this time to the participation by the company.

Mr. Mahoney: I have given you a rule on that that will stand throughout the entire proceeding, and I cited  
 104 you to the Rules and Regulations—

Mr. Hornbein: And we cite you to the Statute which takes precedence over the Rules and Regulations.

Trial Examiner Bellman: Will you cite that part of the statute which you are referring to?

Mr. Hornbein: Yes, sir; I will be glad to.

I am reading from Section 10 (b). "A person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person, or otherwise, and give testimony at the place and time fixed in the complaint at the discretion of the member, agent, or agency conducting the hearing."

Now, under this statute, Your Honor, the only proper party to these proceedings are the persons charged with unfair labor practices whom are complained against and that unless somebody else makes a proper petition for intervention and the Board grants that petition, why, they have no right to be here and participate in these proceedings, and we contend that the rule of the Board to the contrary is invalid, because it is in conflict with the clear provision of the statute.

Trial Examiner Bellman: The charging company in this case, I have ruled is a party. I cite Section 203.8. I also point out that the charging company has been served  
105 with all of the papers throughout the preliminary stages of the complaint and answer and notice of hearing. You have my ruling. Your exception is automatic. I would appreciate your finishing once and for all any further argument you may have on this point, because I think this is the third or fourth time this has been brought up.

Mr. Hornbein: The reason we brought it up, it is clear in the statute this is not the proper way to proceed.

Trial Examiner Bellman: You have a ruling which is quite clear and you have your exception to that ruling.

Mr. Hornbein: All right. We won't make any further objection. Mr. Mahoney will—

Mr. Mahoney: If Your Honor please, I think there is some misunderstanding about it. This is the first I have heard of what the witness has stated—

Trial Examiner Bellman: Just a minute, there was no one examining the witness but you. You started to examine the witness and I understand you gave this gentle—

man an opportunity, and Mr. Prisner said, "I will wait," and you said it was all right for him to go ahead.

Mr. Mahoney: No, I wanted Mr. Prisner to examine immediately before I started examining. I knew nothing of this other point—I am not trying to impose on the ruling of Your Honor which was previously made, but this  
106 I do say, the witness has stated he objects to Mr.

Prisner questioning him, because he is his own lawyer presently involved here and that he has been his attorney and advised him in these matters and other matters, and that it is improper from a legal and ethical standpoint for the counsel that has been advising him to come in and cross-examine him in the case in which he is a witness. Now, as I understand the witness,—I know nothing about the facts, but it is a valid objection on the part of the witness.

Trial Examiner Bellman: That is an entirely different matter.

Mr. Mahoney: What?

Trial Examiner Bellman: That doesn't go to whether the charging company is a party or not.

Mr. Mahoney: It is unethical. It is improper. And Your Honor would follow the same rules, if it is a fact, that an attorney, or advising party or witness should not be permitted to interrogate or come in and cross-examine the witness and bring out matters where he has been his attorney and counsel; would be highly unethical for any lawyer to do that, and it shouldn't be permitted and it wouldn't be permitted in Federal Court where witness raised that objection, and we objected to him proceeding to examine the witness under those conditions.

Trial Examiner Bellman: I can't rule on anything abstract like that. I have to rule on particular questions.

107 Mr. Hornbein: If your Honor please, it isn't abstract. This witness has testified it was a confidential relation of attorney and client.

Trial Examiner Bellman: There is no pending question.



**Mr. Hornbein:** We submit under the circumstances it is improper for Mr. Prisner to examine him at all, because he is using the knowledge he gained by means of a confidential relationship as a basis of an examination, and any questions on that knowledge are improper.

**Mr. Prisner:** If the time has come for me to be allowed to state my position in this matter—

**Trial Examiner Bellman:** I think it might be quite proper, Mr. Prisner, since it has been so widely stated otherwise.

**Mr. Prisner:** For the record, I should like to state that I do not represent Doose & Lintner and have not represented them in connection with the Chapman Brothers job; that I did some work for Doose & Lintner, and particularly did have a negotiation with them in view of certain business transactions and that I told Mr. Lintner and Mr. Doose that whenever there was a conflict of interests between my father's interests and Mr. Doose's or Mr. Lintner's, that always he must understand that I represented not him, not Mr. Lintner, but Mr. Preisner.

**The Witness:** May I speak here?

**Trial Examiner Bellman:** What is the field upon which you propose to examine? Does it involve any matter  
108 in which you were the attorney for Doose & Lintner?

**Mr. Prisner:** I don't think so. I am here as the attorney for Gould & Preisner.

**The Witness:** I would like to clear up this matter.

**Mr. Prisner:** I simply want to cross-examine him within the scope of the direct examination.

**Mr. Mahoney:** The witness asked for an opportunity to clear up this matter, and I submit he should be given an opportunity to clear up this matter.

**Trial Examiner Bellman:** All right. The witness can make a statement.

**The Witness:** At the time this trouble started, I went to Mr. Prisner's office and he gave me an affidavit to sign, stating what took place down there, and I said to him,

"Stanley, I can't agree with that, and I don't want to sign," and he says, "I will force you to."

Trial Examiner Bellman: Who was Stanley?

The Witness: Prisner, and then I called his attention to the fact he was representing Doose & Lintner, and that I come to him for advice and to talk things over with him, and then he informed me he could no longer take our case, so we were without counsel, and therefore, I object to having him question me in any part of this case. I don't think it is fair.

Trial Examiner Bellman: Proceed with your examination and I will rule on particular questions as they may arise.

109 *Cross-Examination*

Q. (By Mr. Prisner) Mr. Lintner, the contract that you had with Chapman Brothers, will you tell the Court, the Examiner, what type of contract that was? A. It was on a cost-plus basis.

Q. A cost-plus basis? A. That is right.

Q. Did that provide that you had to furnish electrical work? A. Not altogether, no.

Q. What do you mean by that? What did it provide?

Mr. Hornbein: I submit the best evidence of that is the contract, itself. Was there a written contract?

The Witness: Yes.

Mr. Hornbein: That ought to be brought into Court then. It is quite improper to have these secondary questions.

Q. (By Mr. Prisner) Will you produce that, Mr. Lintner? A. Yes, sir.

Q. Now, were you on the job on Bannock Street at any time between the 27th of September and January 8th, approximately, 1948?

Mr. Mahoney: Object to that. It has already been asked and answered.

Trial Examiner Bellman: The objection is overruled.

Mr. Mahoney: Save an exception.

Q. (By Mr. Prisner) You may answer.

110 The Witness: Read that, please.

(Last question here read by the reporter.)

A. Well, no doubt I was there some time.

Q. (By Mr. Prisner) Were you there, daily? A. No, not all together.

Q. Would you say once a week? A. Oh, I imagine so, yes.

Q. Any particular day in the week? A. No.

Q. Now then, on the day in the week that you say you probably were on the job during this period of time, was any member of the Gould & Preisner firm on this job? A. I don't recall.

Q. Then, you do not recall. Is this your answer that you do not recall whether or not, any of the dates that you were on the job, between September 27th, 1947, and January 8, 1948, whether there were any of Gould & Preisner employees on the job? A. I never take down the dates when I happened to be on the job; I can't say.

Q. Then you do not know whether any of Gould & Preisner's men were on the job between the 27th of September, 1947 and the 8th of January, 1948, is that correct?

A. I can't give it by the dates. I can tell you what happened on the job.

111 Q. I am simply asking you if you know whether any of our men were on the job. A. I don't know by the dates.

Q. Do you know whether they were at all? A. Yes, they were there.

Q. How many times did you see them there? A. Two or three times.

Q. Two or three times. Did you make any effort to contact Gould & Preisner on those occasions relative to their men being on the job? A. I would like to enlarge upon that a little bit.

Mr. Prisner: Just strike that.

Q. (By Mr. Prisner) About when do you think, approximately, did you see these men of Gould & Preisner on the job?



Mr. Mahoney: He has already answered that two or three times. I counted three times.

Trial Examiner Bellman: The objection is overruled.

A. The only way I know is when I wrote that letter of January 22d.

Q. (By Mr. Prisner) Did you see any men in October?

A. No, I didn't see them.

Q. Did you see any men in November?

Mr. Mahoney: I object—

Trial Examiner Bellman: I gave you a standing objection to this line of questioning.

112 A. I don't remember these dates, Your Honor, and I don't think it is necessary—

Trial Examiner Bellman: Answer the question to the best of your ability and don't go into a discussion of what you think is necessary or not necessary. Unless there is a specific objection, give the best memory you have and answer the questions to the best of your ability as they are addressed to you.

A. I don't know.

Q. (By Mr. Prisner) How about the month of December, Mr. Lintner? A. I don't recall.

Q. Now, I thought you stated on direct examination that you—

Mr. Hornbein: If Your Honor please, I would like to state one objection and that is on this basis: To permit Mr. Prisner to ask questions is one thing and to permit him to cross-examine is another thing and we point out that the Board and Gould & Preisner are appearing here in virtually the same capacity. The Board is appearing here to prosecute the complaint that has been filed by Gould & Priesner, and permitting the Board to ask the witness questions on direct, and then permitting virtually the same party to cross-examine, I have never heard of any such proceeding.

Mr. Fousek: I submit to the trial examiner that the Board is a moving party in this action and Gould & Preisner is a separate, individual party.

113 Trial Examiner Bellman: You don't need to argue that point. Keep your questions as non-leading as possible. Proceed.

Mr. Prisner: I submit I do have a right—

Trial Examiner Bellman: You have been given that right. Don't waste time arguing.

Mr. Prisner: What was the last question?

Trial Examiner Bellman: An awful lot of time has been wasted here on repetition and arguing on points that have been clearly ruled on. Now, let's proceed.

(Last question here read by the reporter.)

Trial Examiner Bellman: Reframe your question.

Q. (By Mr. Prisner) I thought you said on your direct examination that the first time you noticed these men there was about January 8th? A. I did testify about the time, approximately.

Q. And it was on January 22nd, was that the first time you wrote to Gould & Preisner? A. That is right.

Q. Between January 8th and the 22nd, do you know whether any Gould & Preisner men were there? A. Yes. they were there.

Q. Well now, will you state whether or not the situation with reference to the Chapman Brothers job was that Gould & Preisner did do the electrical work and  
114 Chapman would have the privilege of purchasing his fixtures elsewhere? A. I don't quite understand that.

Trial Examiner Bellman: Read the question.

(Last question here read by the reporter.)

A. I don't recall that.

Q. (By Mr. Prisner) Do you know at this time? A. I had never discussed any electrical work to be done on that job with Mr. Preisner or how much. I give him the opportunity to bid on it which he refused to do, and he still refuses to give me a price on what he had contracted for, putting in that feeder line.

Q. Has any electrical work been done by anyone else on this job, Mr. Lintner? A. Yes.

Q. Can you state by whom? A. Mr. Fisher.

Q. Mr. who? A. Mr. Fisher.

Q. Can you distinguish that from the Fisher— A. I don't know his first name.

Q. Fisher Electric? A. Yes, and he was hired by Clawson-Bal.

Q. Did you hire him to do any work for you? A. No.

Q. Is there further work to be done to the premises  
115 besides what is to be done by Clawson-Bal?

Mr. Mahoney: I object to that as being immaterial.

Trial Examiner Bellman: The objection is overruled.

A. Yes, General Adjustment Company has some work to do.

Q. (By Mr. Prisner) The lower floor of the building, by whom is that to be occupied, if you know? A. Chapman Brothers, the south portion.

Q. And was the upper section to be leased to someone else? A. General Adjustment.

Q. The entire floor? A. No, sixty feet.

Q. By whom was the basement to be occupied? A. Chapman Brothers.

Q. Then in this—you testified the Chapman Brothers would occupy the entire lower floor, and all but approximately sixty feet of the upper floor? A. Yes, sir.

Mr. Mahoney: I object to that. It has been asked and answered several times.

Trial Examiner Bellman: The objection is overruled.

Mr. Prisner: I think that is all.

### *Cross-Examination*

Q. (By Mr. Hornbein) Mr. Lintner, during this time a picket was placed on the Bannock Street project, did you have other construction projects that were in prog-

116 ress at that time? A. Yes, sir.

Q. And did the employees on this project continue to work without any stoppage? A. Yes, sir.



Q. Were those workers on this other project, were they members of the Denver Building Trades Council? A. Yes, sir.

Mr. Mahoney: I have no questions.

Q. (By Mr. Williams) They were also members, or some of them were of the other respective unions here? A. Yes, sir.

Q. When you entered into this contract with Chapman Brothers, can you produce the contract with Chapman Brothers—did you submit that to your attorney for approval, that particular contract? A. Yes, Mr. Prisner drew it.

Q. Mr. Prisner drew the contract about which he has now cross-examined you? A. That is right.

Mr. Williams: No further questions.

Mr. Mahoney: No further questions.

Trial Examiner Bellman: Is there any request now that this witness produce a contract? The witness has not been excused. Only the trial examiner excuses witnesses. Please take the stand.

117 The Witness: Excuse me.

Trial Examiner Bellman: There was a request that a contract be produced. One of the representatives of the respondents made that request, I am sure. Do you want to press it or not?

Mr. Hornbein: We made no request. We objected to the line of questioning. Under the best evidence rule, the contract was the best evidence.

Trial Examiner Bellman: Are you requesting—

Mr. Hornbein: We do not request it, no, sir.

Trial Examiner Bellman: Is there anything further of this witness from any of the parties?

Mr. Mahoney: Not from the respondents.

Mr. Fousek: Not from the Board.

Trial Examiner Bellman: All right. The witness is excused.

(Witness excused.)

**Trial Examiner Bellman:** It is now a few minutes before five. It is my intention to sit approximately six hours a day. We will begin at 9:30 and we will go until the first convenient place to adjourn, between twelve and twelve-thirty, taking approximately an hour and a half to two hours for lunch, and then we will begin again at two o'clock and go until five.

**The hearing is adjourned until 9:30 tomorrow morning.** (Whereupon at 4:45 p.m., Thursday, April 1, 1948, the hearing in the above-entitled matter was adjourned to 9:30 tomorrow morning.)

. . . . .

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## PROCEEDINGS

**Trial Examiner Bellman:** The hearing will be in order. It is now approximately five minutes after time to start. The representatives of the company seem not to have appeared yet.

**Mr. Fousek:** They did not mention anything about a reason for a delay, or that they would be late—

**Trial Examiner Bellman:** You have witnesses, do you?

**Mr. Fousek:** I do, sir.

**Trial Examiner Bellman:** Let's proceed, then. The time is past.

**Mr. Mahoney:** Your Honor, I stated yesterday for the record, read in the opinion of the judge of the District Court, His Honor, J. Foster Symes, and we have certified copies here that I stated I would supply for the record. One certified copy and one original, and one copy. If you will mark this as Respondent's Exhibit No. 2. Is there any objection to their introduction?

**Mr. Fousek:** No.

**Trial Examiner Bellman:** This document has been marked Respondent's Exhibit No. 2, for identification, and a duplicate has been furnished. Any objection? Appears to be none. Document is admitted as Respondents' Exhibit No. 2 with its duplicate.

(Thereupon, document above referred to was marked as "Respondents' Exhibit No. 2," for identification, and received in evidence.)

126. Mr. Fousek: Mr. Doose, will you take the stand, please.

**William Doose**, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

*Direct Examination.*

Q. (By Mr. Fousek) Will you give your name, spelling it, and your address to the reporter? A. William Doose, D-o-o-s-e, mailing address, 4835 Grove.

Q. Are you a partner in the firm known as Doose & Lintner? A. I am.

Q. Do you recall a conversation with Clifford Gould, Mr. Fisher and Mr. McDonough which occurred January 8th at your Bannock Street job? A. I believe I do.

Q. What time of the day was that? A. Oh, it was in the morning some time; I don't recollect the hour.

Q. Do you recall Mr. McDonough saying anything at that meeting? A. Well, there was a lot of things said, but I can't recall the words, what was said, exactly.

Q. Now, would you give the examiner your best recollection of the conversation? We don't expect you to be able to quote anyone absolutely exactly. Just give your

127 best recollection. A. My memory isn't very good any more. I don't recall what was said, exactly.

Q. Not exactly; what did he say? A. Well, there was something said about there was a non-union electrician on the job.

Q. That is the Gould & Preisner people? A. Yes.

Q. What was said about that? A. Well, there was said something that it didn't look very good to have non-union and union men working together.



Q. And who said that? A. I don't know which one it was. There was two or three of them there. I didn't pay much attention to which one said it.

Q. Just give the examiner your best recollection of what Mr. McDonough said?

Mr. Mahoney: He hasn't said Mr. McDonough said anything; leading and suggestive, something the witness hasn't testified to. He has already answered he don't remember what Mr. McDonough said.

Q. (By Mr. Fousek) Didn't you testify in the former proceeding?

Mr. Hornbein: We object to cross-examination of the witness.

Trial Examiner Bellman: Let's have the witness' recollection.

128 Q. (By Mr. Fousek) What, if anything, was said about continuing the services of Gould & Preisner?

A. Well, it was said if he went ahead and worked, why— Mr. Goold said they had to put a picket on there to notify its members that the job was unfair.

Q. Who said that, sir? A. I believe that was Clifford Goold.

Q. Now, what did Mr. Fisher say? A. I don't know what Mr. Fisher said. There was him and Louie and Mr. Preisner were in one end of the building and I was in the other end of the building. The building is 100 feet long and I can't hear what they said on the other end of the building.

Q. What did Mr. McDonough say, if anything?

Mr. Mahoney: He has already said he didn't hear.

Trial Examiner Bellman: The objection is overruled.

Mr. Mahoney: Cross-examining his own witness. He has answered it twice he don't remember.

A. I don't remember.

Q. (By Mr. Fousek) I want you to try real hard to think—

Mr. Mahoney: I object to those remarks.

A. I don't remember.

Q. (By Mr. Fousek) Now, do you recall telling Judge Symes that Mr. McDonough said that it was easy to get rid of Gould & Preisner as electrical contractors?

129 A. Who said that?

Q. You said that to Judge Symes in the prior hearing? A. No, I didn't say that.

Q. What did you say? A. I believe something was said that Mr. McDonough said if he was a contractor he probably could get rid of Gould & Preisner.

Q. Did you hear Mr. McDonough say that? A. Well, I vaguely recollect that.

Q. What did you say in response to that, if anything? A. I believe I said I had to have a reason to do that.

Q. Do you recall whether or not there was a picket placed on the construction site the following day? A. There was.

Q. Did your work cease on the building. A. Yes.

Q. How long were you shut down? A. Approximately two weeks.

Q. Do you recall writing a letter to Gould & Preisner terminating their services? A. Yes.

Q. Did you take that letter to Clifford Goold, the representative of the Denver Building and Trades Council?

A. I did.

130 Q. And when was the picket removed with reference to your taking that letter to Clifford Goold?

A. I don't exactly remember whether the next day or the following day.

Q. What employees were working on the job at the time the picket was placed on the construction site, what types of crafts? A. I believe there were plumbers there and laborers, I believe.

Q. Were there any cement finishers? A. No.

Q. Or plasterers? A. No.

Q. The electrical work had to be done before the plasterers came in? A. That is right.

Q. Do you recall whether any carpenters were working there, sir? A. That is something I don't know exactly

whether he took the carpenters off that day and sent them to another job.

Q. The carpenters were working on and off during that time? A. Yes.

Q. There was necessity for the services of the carpenters in order to complete the building? A. Yes.

131 Q. Before you could complete the building, it would be necessary to utilize the services of the plasterers? A. Yes.

Q. And painters? A. No painters at that time.

Q. Before you could have completed the building, did you have to utilize the services of the painters? A. Yes, I did.

Q. Incidentally, who is Mr. McDonough? A. Mr. who?

Q. Mr. McDonough, Mike McDonough? A. He is a representative of the plumbers' union.

Mr. Fousek: Do we stipulate to Mike McDonough's position?

Mr. Mahoney: Yes.

Mr. Hornbein: Sure.

Q. (By Mr. Fousek) What is his title?

Mr. Hornbein: He is the business representative of the Plumbers Local Union No. 3.

Mr. Fousek: That is all.

Mr. Mahoney: There is one question.

### *Cross-Examination.*

Q. (By Mr. Mahoney) There was just one picket placed there? A. Yes.

Mr. Mahoney: That is all.

132 Trial Examiner Bellman: Is there any dispute as to what the sign said? That question was raised yesterday. It is now indicated that the matter is out of controversy now.

Mr. Fousek: I will stipulate that the—as a matter of fact, the answer admits—

Trial Examiner Bellman: I think it admits the very words of the sign.



Mr. Mahoney: Yes, there is no dispute on that.

Trial Examiner Bellman: I just wanted to be sure. I don't want to cut you off.

Mr. Mahoney: It is immaterial, because it is already admitted. That is all.

Trial Examiner Bellman: Any other questions now of the witness?

Mr. Mahoney: No other questions. We won't want this witness any more.

Trial Examiner Bellman: Mr. Preisner, your son isn't here and I waited about five minutes after time. Is he planning to be here this morning?

Mr. Preisner: Yes, he said he couldn't get here until eleven o'clock.

Trial Examiner Bellman: I am going ahead at the hour set, unless you present some reason for a continuance. If there is any reason he can't be here, that is different.

The witness is excused.

(Witness excused.)

133 **John Preisner**, a witness called by and on behalf of the National Labor Relations Board, being duly sworn, was examined and testified as follows:

*Direct Examination.*

Q. (By Mr. Fousek) Will you give your name, spelling it, please, and your address, to the reporter? A. John Preisner, P-r-e-i-s-n-e-r, partner of the firm of Gould & Preisner.

Q. Mr. Preisner, were you at the Bannock Street construction site on the morning of January 8, 1947? A. I was.

Q. Did you have a conversation with Mr. McDonough and Mr. Fisher at that time? A. Yes, sir; in front—

Q. Was anyone else present? A. Mr. Lintner and Mr. —I am pretty sure Doose was there at that time.

Mr. Mahoney: We object to that and ask it be stricken, he said pretty sure.

Mr. Fousek: Absolute certainty in this world is a thing no one can achieve.

Trial Examiner Bellman: I will deny the motion to strike.

Mr. Mahoney: Save an exception.

Q. (By Mr. Fousek) How long did the conversation in which you participated continue? A. Mr. Fisher  
134 and Mr. McDonough came to me and said that the job—we couldn't do that work, the electrical work on the job, because it was too big a job for the union to stand for non-union electricians on the job; if it was a bungalow, they wouldn't worry much about it.

Q. What did you tell Mr. Fisher? A. So, I said, "Well," I says, "we have got a contract, and we will have to continue with the job. We will see it will get done." So Mr. McDonough said, "There will be a picket on the job, and the union men know the by-laws of the union regulations which states no union man can work on a job where it is picketed, and therefore, they will have to leave."

Q. Did that conclude the conversation? A. More or less.

Q. Did you check the following morning to see if there was a picket on the job? A. Yes, sir; the following morning there was a picket on the job and the only trade that stayed on the job was our own men stayed on the job and continued to work.

Q. Will you tell the examiner the arrangements you entered into with Doose & Lintner for the performance of certain electrical work on that building? A. Sometime in September, the—it may be October, Mr. Lintner had contacted me several times with plans for a job to be  
135 built for the Chapman Brothers. At one time, the first set of plans that he presented to me was just a one-story building, and I went over the job at that time and gave them no tender of a bid, because it was in the formation of an idea, before Mr. Lintner got the contract from Chapman Brothers. But there was talk of a larger building, with no possible chance of getting a commitment

from Chapman—he was kind of cool to that kind of a building, that kind of a job, and later on, the second set of plans, there was a double store with an arrangement for renting to business firms on the upper floors.

Mr. Lintner wanted to know how much an electrical job would be, containing a certain amount of outlets which I laid out on the original plan, and we decided certain fixtures would be appropriate for general lighting on the job, so my proposal from these plans showed a certain amount of outlets and I gave a copy to Mr. Lintner at that time.

Q. Now, showing you a copy of Respondents' Exhibit No. 1, is that the proposal which you showed to Mr. Lintner?

A. I made this out.

Mr. Mahoney: I ask the witness to answer the question.

A. This is the original copy of the proposal. Such a copy was given to Mr. Lintner which he could present to Mr. Chapman.

Mr. Mahoney: I object to that. The question has been asked and answered. We object to him volunteering.

136 Trial Examiner Bellman: The record will stand.

Q. (By Mr. Fousek) And after you submitted the document, Respondents' Exhibit No. 1 to Mr. Lintner, what occurred? A. Possibly a month later, Mr. Lintner called me up and said the job is now ready to start the wiring on this job. When I got down to the job with one of my men, and had some material to deliver, we found that just one story had been built and they were about to pour the concrete on the upper floor.

Mr. Mahoney: Object to that. The question is: What was done?

Trial Examiner Bellman: The objection is overruled. Proceed.

A. This particular building has steel joists. It is known as a fireproof job. I remember the floor is set on some steel joists with some steel mesh wire where they can pour concrete so in that case, Mr. Lintner thought we would have to have the feeder in before this concrete was poured. One



of my men installed the feeder, one feeder for the lower floor on the north side of the building and one feeder for the upper floor on the north side of the building and one feeder for the rear of the south side of the building and one feeder for the front part of the building. Now, this was a tentative idea, not knowing who was going to rent it at that time; there was no rental; they had not rented any part of the building.

137 Possibly a month or a month and a half later—the roof was then on—and Mr. Lintner called me and said, “Now it is ready to wire up, both the lower and the upper floors on the south wing.”

Trial Examiner Bellman: About when would this be?

Mr. Mahoney: I object to this; has no material bearing on this, or any proof of any acts on the part of the respondents. It is just relating a long string of conversation between the contractors.

Trial Examiner Bellman: I will give you a standing objection on that basis.

Mr. Mahoney: And none of us were present; has no bearing upon the case.

Trial Examiner Bellman: I will give you a standing objection on those additional grounds.

A. Mr. Lintner and myself,—

Trial Examiner Bellman: Just give me the approximate date now.

The Witness: It seems to me before Christmas; some time in December. Can I look at my memos?

Mr. Williams: We object to it unless it is necessary, Your Honor.

The Witness: That is to refresh my recollection about the time it was going on.

Trial Examiner Bellman: If you think about De-  
138 cember, that is satisfactory as far as I am concerned, unless counsel wants to have you refresh your recollection.

Mr. Fousek: That I think is close enough.

A. Mr. Lintner—Mr. Chapman, the owner of the property—

Mr. Mahoney: Mr. Examiner, you ruled on that, did you, my objection?

Trial Examiner Bellman: I have given you a standing objection.

Mr. Mahoney: Exception.

Trial Examiner Bellman: Yes, and your exceptions are automatic.

Mr. Mahoney: Very well.

A. Mr. Lintner and myself and Chapman laid out the wiring for the upper floor and the lower floor on the south side only and not the north side, because they were negotiating for a lease with Clawson-Bal of Chicago and also a Mr. Hill who was a tenant for the building, south side of this 1068 Bannock, upper floor. He also was present and laid out the complete wiring for his section of the building. The men started to work and they worked for about a week and a half until the appearance of Mr. Fisher and Mr. McDonough of the unions, plumbers' union and electricians' union.

Q. (By Mr. Fousek). Then you had those conversations?

A. Then everything broke up; interruptions with us and the men couldn't work.

139 Mr. Mahoney: I ask the last answer, everything broke up, be stricken.

Trial Examiner Bellman: I will strike that.

Mr. Mahoney: A conclusion of the witness.

Trial Examiner Bellman: It is stricken. You don't need to go ahead with an objection after the ruling is made.

Q. (By Mr. Fousek) After this picket came, did your employees continue to work, after January 8th? A. Yes, sir.

Q. How long? A. Until about the day that we received a letter from Doose & Lintner stating that our contract was terminated.

Q. What happened on that day, on the last day your employees worked? A. The next day, the employees appeared was a cold day, and my employees came back about noon, and at that time, Mr. Layton, one of my men, was forced off the job.

Mr. Mahoney: I object to that, if Your Honor please, not responsive to the question, also a conclusion of the witness. A. That day—

Trial Examiner Bellman: Just a minute. I will strike "forced off the job."

Mr. Fousek: I will join in that motion.

A. I was called up about two o'clock in the afternoon, 140 and our bookkeeper got ahold of me and said—

Mr. Mahoney: We object, of course—

Q. (By Mr. Fousek) Did you have any conversation with Doose & Lintner on that day?

Mr. Hornbein: We object to this—

Mr. Mahoney: Mr. Examiner, we object unless the respondents were present.

Trial Examiner Bellman: The objection is overruled.

Mr. Mahoney: Save an exception.

A. About two o'clock in the afternoon, I got a telephone call—

Mr. Williams: We ask the witness answer the question.

Mr. Fousek: Just answer the question. If you will read that question back, please.

(Last question here read by the reporter.)

A. The day I received the letter, or the day previous to receiving the letter?

Q. (By Mr. Fousek) The day previous. A. The day previous, Mr. Lintner told me—

Mr. Mahoney: We object to that and ask—

Trial Examiner Bellman: Standing objection to that type of testimony.

Q. (By Mr. Fousek) What was said on that occasion?

Trial Examiner Bellman: I will give you a standing objection on the basis it wasn't in the presence of the respondents.



141 A. Mr. Lintner told me I would have to get off the job so he could continue with his project.

Mr. Fousek: That is all.

Mr. Mahoney: That is all.

Trial Examiner Bellman: Any questions at all of this witness further?

Mr. Mahoney: No further question as far as we are concerned.

Trial Examiner Bellman: There appear to be none. The witness is excused.

(Witness excused.)

**Clifford Goold**, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

*Direct Examination.*

Q. (By Mr. Fousek) Will you give your name, spelling it, and your address to the reporter. A. My name is Clifford Goold, G-o-o-l-d. Would you want my office address?

Q. Yes, please. A. My office address is 832 West 6th Avenue, Denver, Colorado.

Q. In what business are you engaged, sir? A. I am the secretary-treasurer and the business representative  
142 of the Denver Building and Trades Council.

Q. How long have you been in that position? A. About eighteen months, I believe.

Q. Are you a member of a union? A. I am a member of the Plasterers' Union, Local No. 32, Denver.

Q. What international association is that affiliated with, if any? A. The Plasterers Union—

Mr. Hornbein: I don't know what that has to do with it, the plasterers union isn't a respondent.

Trial Examiner Bellman: Why have you brought it in?

Mr. Fousek: I intend to show that the rules and regulations of the unions, including the plasterers prevent, for example, their members from working on jobs in which

there are non-union people, running picket lines. There is testimony in the record that necessary to complete the job, that the—at the Bannock Street construction site, was the work of the plasterers. The effect, of course, of a picket on the completion of that job is partly one in which the plasterers' work is involved. The effect of the picket sign on the plasterers. It becomes important to determine the effect of that picket upon members of the plasterers' union.

**Trial Examiner Bellman:** You are not alleging any unfair labor practices against the plasterers?

**143 Mr. Fousek:** No.

**Mr. Mahoney:** It isn't mentioned in the complaint and not made a party thereto, and there is no proof any plasterers were kept off this work, no evidence and no proof. And the further objection, under the Taft-Hartley law, Section 8, Article 5 (a). B (1). The law provides: First, to restrain, or coerce employees in the exercise of the rights guaranteed in Section 7; Provided this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein."

In the first place, the plasterers' union is not involved. They are not respondents. There is no evidence either directly or indirectly that any plasterers were to be put off this job, or any one left the job, or that they were ever on the job, so it would be assuming a state of fact that don't exist and there is no proof of it; would be highly incompetent and immaterial.

**Trial Examiner Bellman:** Are the plasterers members of the Building Trades Council?

**The Witness:** Yes.

**Trial Examiner Bellman:** The objection is overruled.

**Mr. Mahoney:** Save an exception.

**Mr. Fousek:** I believe there is a question pending, sir.

**Trial Examiner Bellman:** Read the question.

**144 (Last question here read by the reporter.)**

**A. Local No. 32 is affiliated with the Operative**

Plasterers and Cement Finishers International Association of United States and Canada.

Q. (By Mr. Fousek) Now, with reference to the Denver Building Trades Council, does it have a constitution and by-laws? A. It does.

Q. Mr. Fousek: Mark this.

(Thereupon document above referred to was marked as "Board's Exhibit No. 4, Witness Goold," for identification.)

Q. (By Mr. Fousek) I have handed to the reporter and had her mark for the purposes of identification document as Board's Exhibit 4. Handing to you Board's Exhibit 4, Mr. Goold, would you tell me what that is? A. This is the Constitution and By-Laws of Denver Building Trades Council of Denver and Vicinity and it states on here "For Closed Shop Conditions".

That is enough. A. Its address is Denver, Colorado, effective February 1, 1936. If the Honorable Examiner would permit, I would like to make a brief comment as to the status of that.

Q. Is this no longer your Constitution and By-Laws? A. May I be permitted to make a brief statement regarding the status?

Q. I have no objection to it unless the examiner—

145 Mr. Mahoney: I think he should be permitted if he wishes.

Trial Examiner Bellman: I think we ought to know what its present status is.

The Witness: In the case of the Building Trades Council, as in the case of almost every organization, we are in the act of drafting a new set of by-laws which are in conformity with the new law. These by-laws are antiquated in so far as the law is concerned and at the present moment, we have the most able members of our organization at work—I say at the present moment—I mean at this time at work drafting a new set of by-laws so there are in this book rules which do not conform to the law. We have attempted to function passing



over these rules wherever possible. By June 1st, we will have in effect our new by-laws subject to the approval of our attorneys.

Trial Examiner Bellman: You say new law, what law are you referring to?

The Witness: I am referring to the National Labor Relations Act, or Labor Management Act of 1947.

Q: (By Mr. Fousek) A new set of the Constitution and By-Laws hasn't yet been adopted? A. Hasn't yet been adopted.

Mr. Fousek: Offer in evidence Board's Exhibit No. 4.

Mr. Hornbein: For what purpose?

146 Mr. Fousek: Showing the method by which the Denver Building & Construction Trades Council operates, is operated, setting forth the association between the council and the subordinate crafts and for all other purposes for which it may be competent.

Mr. Mahoney: No charge here they operated illegally, or that constitution was illegal, or any acts were illegal. As a matter of fact, the law specifically provides under the section I read, they have a right to make rules and regulations.

The object of the Taft-Hartley law wasn't to destroy unions, or prevent them from making rules and regulations involving their members, and they specifically provided that they were given that specific protection so this constitution of this organization would be highly immaterial.

Trial Examiner Bellman: Overrule the objection. The document is admitted as Board's Exhibit No. 4.

Mr. Mahoney: Save an exception.

(Thereupon document above referred to, previously marked as "Board's Exhibit No. 4, Witness Gould," for identification, was received in evidence.)

Mr. Fousek: May we go off the record a moment?

Trial Examiner Bellman: Off the record.

(Discussion here had off the record.)

**Trial Examiner Bellman:** On the record.

**Mr. Fousek:** Mark these.

(Thereupon documents above referred to were marked as "Board's Exhibits Nos. 5, 6, 6A, 7, 8 and 8A, Witness Goold," for identification.)

147 **Q.** (By Mr. Fousek) I hand you document which has been marked for the purpose of identification as Board's Exhibit No. 5. Can you tell me what that is, sir?  
**A.** This is the constitution—this says that it is the Constitution of the Operative Plasterers and Cement Finishers International Association of United States and Canada.

**Q.** You are a member of that union? **A.** I am a member of that union.

**Q.** That is their constitution and by-laws, is it not? **A.** It says here that it is the constitution, but as I have stated to you, I know for certain that all organizations are making new constitutions. This is not the one in effect at the present time.

**Q.** Do you know whether or not that is the constitution and by-laws which you have submitted to the National Labor Relations Board? **A.** No, I do not know that. I didn't submit any constitution and by-laws to the National Labor Relations Board.

**Mr. Mahoney:** Just a moment. May I have an opportunity to object? We object to this evidence on these constitutions and by-laws. There are many provisions governing labor unions, funerals, dues, benefits and many other provisions that have nothing to do with this case at all. Of course, none of those are admissible for any purpose.

Now, if there is any portion or section in this  
 148 particular by-laws that is affecting this case, or the facts in this case, then, let them call to the examiner's attention that fact, and then let us raise our objections to that particular fact.

Now, for the examiner, or for us to go over all the whole by-laws and guess what it is—maybe 99½ percent is entirely immaterial; a lot of immaterial documents should

not be introduced in evidence, and in fairness to these respondents, let him show us what particular section is applicable, has some probative value in this particular case. Now, that is a reasonable objection and it is a valid objection.

**Trial Examiner Bellman:** Are there several constitutions involved in this line of examination?

**Mr. Fousek:** Yes, I intend to introduce them in evidence.

**Mr. Mahoney:** Now, some of them are not in effect now. They can take what specific—

**Mr. Fousek:** Well now, you tell me they are not in effect. I know, as a matter of fact, that these constitutions and by-laws have been submitted to the government as their constitutions and by-laws under which they are permitted to operate under the Taft-Hartley law.

**Mr. Hornbein:** Are you testifying?

**Mr. Fousek:** I realize, sir, my statement is not evidence in this record. I don't want to agree and acquiesce to the repeated statements these are not in effect.

**Mr. Mahoney:** We have rights to be protected. 149 What section in this is essential to this case? The examiner has a right to know. The examiner shouldn't be required to read all of these constitutions. He should state what it is appropos to this case, and question him about it, and then we may have an opportunity to cross-examine. That is a reasonable and valid objection.

**Mr. Hornbein:** We make the further objection: These constitutions and by-laws, particularly as to the plasterers' union, is not involved in this case. It is an autonomous union. It isn't represented here at all. We don't represent it. The idea of bringing a constitution of some outside union in. You may as well bring the Constitution of the coal miners in, it has as much to do with this case.

**Mr. Fousek:** There is evidence in the record that this union is a member of the Denver Building and Construction Trades Council.

**Mr. Hornbein:** No, there isn't. The international union is not affiliated. The only affiliated unions are local unions which have their own constitutions and by-laws.



**Trial Examiner Bellman:** Well, I am going to suggest the possibility that parties may wish to try to stipulate as to the particular provisions in effect at a particular time which may have a bearing on the issues. As I indicated earlier, I am willing to cooperate in attempting to complete the hearing as early as possible.

I am going to give you a ten-minute recess to see 150 if you can arrange some method of expediting matters, if any. Then we will continue with whatever type of examination appears to be necessary.

Hearing will be in recess for ten minutes.

(Whereupon, a short recess was taken.)

**Trial Examiner Bellman:** The hearing will be in order. Recess has been approximately twenty minutes. Do the parties desire any further time in which to reach an understanding?

**Mr. Mahoney:** I don't believe any more time would accomplish anything.

**Trial Examiner Bellman:** Are you of the same opinion?

**Mr. Fousek:** Yes.

**Trial Examiner Bellman:** Proceed.

**Q. (By Mr. Fousek)** Who is the executive officer of the local union of operative plasterers?

**Mr. Hornbein:** To which we object as the plasterers are not in this case.

**Mr. Fousek:** Mr. Examiner, it is necessary—

**Trial Examiner Bellman:** I will give you a standing objection to this line of examination on the plasterers. I understand counsel for the Board is making no contention that they are parties, or that they violated the Act, but he is introducing this going to the general question of what effect the picket may have on Doose & Lintner.

**Mr. Fousek:** Employees of Doose & Lintner.

151 **Trial Examiner Bellman:** Employees of Doose & Lintner. All right.

**The Witness:** Will you read that question?

**Trial Examiner Bellman:** Read the question.

(Last question here read by the reporter.)

A. The business representative of the local union of operative plasterers, No. 32, is Frank Van Portflint.

Q. (By Mr. Fousek) Do you know what his address is? A. 1450 Lawrence.

Q. And is that the office address? A. That is the office address of the union.

Q. What is his title again, sir? A. Business representative, and secretary, financial secretary.

Q. And the full name of that union? A. Local No. 32, Operative Plasterers and Cement Finishers International Association of the United States and Canada.

Q. Who are the executive officers of Local No. 68 of the Electrical Workers? A. Mr. Clyde Williams is the business representative.

Q. The carpenters?

Mr. Mahoney: Just a moment. In order to save time, Mr. Clyde Williams is present and he is here in the court.

Q. (By Mr. Fousek) And the carpenters union? A. Mr. Paul Johnson. He is also present.

152 Q. And the local No. 3 of the plumbers? A. Mr. Michael V. McDonough. He is also present.

Q. When was the first time your attention was directed to the fact that Gould & Preisner were employed at Doose & Lintner's? A. The morning of January 8th.

Q. Who directed it to your attention? A. The report—

Q. Who directed it to your attention? A. The report was made by, I believe the electrical workers representative.

Q. Mr. Fisher? A. It was either Mr. Fisher, or Mr. Williams; I couldn't say for sure.

Q. Did you go to the construction site? A. Yes, sir.

Q. Did you talk to Mr. Doose and Mr. Lintner? A. Yes, sir.

Q. After that conversation, what did the Denver Building and Construction Trades Council determine to do?

Mr. Hornbein: If anything.

Q. (By Mr. Fousek) If anything. A. After the conversation?

Q. Yes, that morning of January 8th. A. Nothing; they didn't determine anything after the conversation.

153 Q. Had they made any other prior determination?

A. They had.

Q. When? A. That morning at a board of business agents meeting.

Q. What time of the day was that determination made?

A. About 9:30.

Q. Was that before you saw Doose & Lintner? A. Yes.

Q. Where was the meeting held? A. In our meeting hall at 832 West 6th Avenue.

Q. Who was present? A. I couldn't say for sure, the greater part, the greater—the large majority of the business agents of the various affiliated organizations were present.

Q. Would you name all of those you are able? A. Well, yes, —

Mr. Mahoney: You mean of those that were present?

Mr. Fousek: That is right.

A. I would have to have the minutes of the meeting, Mr. Fousek. The meetings aren't always attended by the same members.

Q. (By Mr. Fousek) Could you get those minutes? A. Oh, yes.

Q. Would you get them for me? A. If counsel wishes to present those.

154 Q. Are they available in the courtroom?

Mr. Mahoney: We have the minutes to give to the witness to refresh his memory.

A. The agents present, Bayles—

Q. (By Mr. Fousek) Who did he represent? A. Lathers union; Soules represents the lathers union; Smith of the iron workers union; Mr. Hooper, roofers; Mr. Cooney of the linoleum-layers; Mr. McDonough of the plumbers; Mr. Tuttle of the heat and frost insulators; Mr. Salter of the teamsters, Local No. 13; Mr. Williams of the electricians; Mr. Fisher of the electricians; Mr. Brown who is president of the glaziers union; Mr. Lusk who is business representa-



tive of the glaziers union; Mr. Tucker of the boilermakers; Mr. Kidd of the common laborers and hod carriers union; Mr. Paul Johnson of the carpenters union, and Mr. Stanley Bergman of the carpenters union. Mr. Bergman is not an officer.

Mr. Mahoney: Is that all?

The Witness: That is all.

Q. (By Mr. Fousek) What determination was made at that meeting?

Mr. Hornbein: With regard to what?

Mr. Fousek: With regard to the Doose & Lintner problem.

The Witness: What determination was made?

Q. (By Mr. Fousek) Yes. A. The business representative was instructed to place a picket on the job stating that the job was unfair to the Denver Building Trades Council.

Q. What business representative was instructed to place the picket? A. The business agent of the council, myself. I was instructed.

Q. Did you place that picket? A. I placed that picket on the morning of January 10th.

Q. January 10th? A. Yes.

Mr. Fousek: May we go off the record?

Trial Examiner Bellman: Off the record.

{(Discussion here had off the record.)}

Trial Examiner Bellman: On the record.

Q. (By Mr. Fousek) As a result of the off the record discussion, Mr. Goold, has your recollection been refreshed as to the date? A. As to the date that I placed the picket?

Q. Yes. A. Yes.

Q. What was the date? A. January 9th.

Q. What was the name of the picket? A. What was the name of the picket?

156 Q. Yes. A. Joe Padillo.

Q. Was he a member of one of the unions? A. He was a member of Local No. 720, hod carriers and common laborers.

Q. Who compensated him for his services? A. The Building Trades Council.

Q. Who instructed him, if anyone, as to how he was to perform? A. I did.

Q. Is there a black board at the Denver Building and Construction Trades Council headquarters?  
Construction Trades Council headquarters? A. That is quite right.

Q. What is placed on that black board? A. The names of all people, of all firms or contractors who are not in agreement with the rules and by-laws of the Building Trades Council.

Trial Examiner Bellman: Where is the office located?

The Witness: 832 West 6th Avenue.

Q. (By Mr. Fousek) Was the name of Gould & Preisner placed upon that black board? A. Yes.

Mr. Hornbein: When?

Mr. Fousek: Do you want to take over my examination?

Mr. Hornbein: I think you ought to make your questions specific.

157 Trial Examiner Bellman: I think that is a logical second question after establishing the placement.

Q. (By Mr. Fousek) Would you mind responding to Mr. Hornbein's question? A. I can't answer that accurately, Mr. Fousek, because it has been so many years that I don't think anyone knows for sure, probably ten years ago, fifteen years ago, maybe.

Q. Has it continued on that black board since? A. It has been rubbed off and put back on again, things we are using like that, you know. It is just chalk. One of those things that happens quite frequently in the Building Trades Council.

Q. Is there any other method by which the subordinate unions of the Denver Building and Construction Trades Council are informed of the fact that a company, or employer, has been placed on the unfair list? A. Besides the black board?

Q. Yes. A. Every organization receives a copy of the minutes of each meeting that we hold. That is the only other method.

Q. Did the minutes of the meeting of the morning of January 8th reflect the determination to place a picket on the Doose & Lintner construction site?

Mr. Mahoney: Now then, one objection: We desire to object to this line of questioning for the reason that  
158 the law specifically gives the labor unions a right to make rules and regulations, and gives them a specific right to place names on the black list that are unfair to organized labor and that right still exists notwithstanding the Taft-Hartley amendment to the National Labor Relations Law, and there is no violation here to place a man on the unfair list, nor to send out minutes that he is on the unfair list. It is the only method labor has of protecting itself and the Taft-Hartley law gives them that right to continue their own rules and regulations and black list as unfair any man who attempts to infringe on the rights of labor, so this is all immaterial. No basis has been established here that there was any violation of interstate commerce; wholly immaterial, this line of questioning.

Trial Examiner Bellman: Overrule the objection. I will give you a standing objection.

Mr. Mahoney: Save an exception.

Mr. Fousek: Will you read that question back?

(Last question here read by the reporter.)

A. Yes, they did.

Q. (By Mr. Fousek) Those minutes were distributed in the same manner as was customarily done? A. That is right.

Q. Can you tell me whether or not Board's Exhibit No. 5 has been amended by the international association  
159 to date? A. No, I cannot.

Mr. Fousek: That is all.



*Cross-Examination*

Q. (By Mr. Hornbein) Mr. Goold, you testified that the copies of the minutes of that meeting had been distributed to organizations; did you mean the affiliated organizations of the Denver Building Trades Council? A. Only the organizations affiliated with our Building Trades Council; that is right.

Q. Now, Mr. Goold, are there any individual workers that belong to the Denver Building Trades Council, or is it just an affiliation of different labor unions? A. That is correct. It is just an affiliation of all the construction unions.

Q. Does the Council have any control directly or indirectly over the individual members of the unions. A. None whatever.

Mr. Fousek: I object to that. The Constitution and the By-Laws of the organization are the best evidence of the control of the council over members.

Mr. Mahoney: He has a right to answer a question and if what he says isn't true, you have got a right to cross-examine on the Constitution and By-Laws to the contrary.

Trial Examiner Bellman: I will permit the answer to stand.

160 Mr. Hornbein: That is all.

Q. (By Mr. Mahoney) Mr. Goold, you stated here that you were the one that placed the picket on the premises heretofore mentioned on Bannock Street, is that correct? A. That is right.

Q. And counsel asked you a question if you were the one that instructed the picket? A. That is right.

Q. What were your instructions to that picket? A. My instructions to that picket were to walk in front of the building on the sidewalk, never enter the building under any circumstances, and never to offer any violence or resistance, to picket peaceably and if any trouble started, for him to come into my office immediately. And I believe that is substantially my instructions to him.

Q. Was there only one picket? A. There was only one picket.

Mr. Mahoney: That is all.

Mr. Williams: No questions.

*Redirect Examination*

Q. (By Mr. Fousek) Mr. Goold, I want to hand you a copy of Board's Exhibit 4, directing your attention to Article 7 (b), subsection 4, and I ask you whether or not—

Mr. Mahoney: Wait a minute until we get that article.

Trial Examiner Bellman: Read that question as far as it goes.

(Last question here read by the reporter.)

Trial Examiner Bellman: What page is that on?

Mr. Fousek: Page 13, bottom of the page.

“— whether or not a member of an affiliated union, which in turn is a member of the Denver Building Trades Council, is required to pay a fine collected by his union, which fine is turned over to your organization for a violation of the rules of the Denver Building Trades Council.”

Mr. Mahoney: To which we desire to object. It is immaterial, and for the further reason in Section 8 (b) of the Taft-Hartley amendment to the National Labor Relations Act, this section says that the paragraph shall not impair the rights of labor organizations to prescribe its own rules with respect to the acquisition or retention of membership therein. And under the law, they are given a specific right, and there is no Board or anyone else that can take that right away from them, to make their own rules and regulations governing retention of members. Otherwise, if that were not true, the action under this law could completely destroy every labor union and all the protection that is given to the working man in this nation.

Trial Examiner Bellman: The objection is overruled. Read the question to the witness.

Mr. Mahoney: Save an exception.

162 (Last question here read by the reporter.)

A. I can never remember this rule being enforced.

Mr. Fousek: I ask that the answer be stricken.

Mr. Hornbein: We object, Your Honor.

Mr. Fousek: May I have an opportunity to state my objection?

Mr. Hornbein: Go ahead.

Mr. Fousek: For the reason it is not responsive to the question.

Trial Examiner Bellman: Deny the motion to strike.

Q. (By Mr. Fousek) The rules do provide as I stated, do they not? A. That is what this rule states.

Mr. Fousek: That is all.

Mr. Mahoney: That is all.

Mr. Hornbein: That is all.

Trial Examiner Bellman: Anything further?

Mr. Mahoney: No further questions.

Trial Examiner Bellman: There appears to be nothing further. The witness is excused.

(Witness excused.)

Mr. Fousek: Jerry LoSasso.

Jerry LoSasso, a witness called by and on behalf of the National Labor Relations Board, being first duly  
163 sworn, was examined and testified as follows:

*Direct Examination*

Q. (By Mr. Fousek) Will you give your name, spelling it, to the reporter, and your address? A. Jerry LoSasso, 4570 Zuni.

Q. What is your business? A. Limited and general contractor in conjunction with my father.

Q. General contractor in what building business? A. We are at the present building houses for ourself to be sold to the public.

Q. You have been engaged in business, have you not, for over a period of a year, building houses? A. Approximately three years.

Q. Have you been engaged in construction on 40th Street, and 45th Street in Denver? A. That is true.



Q. Will you give the address, please? A. On 45th Avenue, the addresses will be 2001, 2005, and 2015 West 45th Avenue, and the house on West 40th was 1725 West 40th Avenue.

Q. What is your method of doing business, that is, how do you have your houses built? Do you build them yourselves? A. We hire directly the carpenters and all other work is subcontracted.

164 Q. What other work. What do you mean by that?

A. Well, there is excavating, plumbing, plastering work, electrical work and masonry and brick work.

Q. Has the firm of Gould & Preisner ever done any of your electrical work on either of those two projects? A. On only West 45th Avenue.

Q. When did they start for you? A. About the 20th of September, I believe.

Q. And that was what year? A. Last year, 1947.

Q. Do you know John Fisher? A. I know of John Fisher as of now, but previously I knew him only as Jack Fisher.

Q. Do you know what his business or occupation is? A. He is a representative of the electrical union.

Q. Have you ever conversed with Fisher about electrical work on your 45th Street job? A. About September 1st.

Mr. Mahoney: He asked you if you ever conversed with him. A. Yes.

Q. (By Mr. Fousek) When and where? A. About September 1st, in front of the project on 45th and Tejon.

Q. About what time of the day, do you remember? A. No, I couldn't say whether it was before noon or after noon.

165 Q. What did Mr. Fisher say to you? A. He told me that he was now connected with the electrical union; that he had read in the Daily Record that I had taken out permits for building there and he suggested I use union electricians.

Q. What did you answer? A. I says I would, for him to send me someone to give me a bid.

Q. Did he say anything? A. He said he would send someone to me.

Q. Anything else said? A. Not at that time, I believe not.

Q. Were Gould & Preisner mentioned during this conversation? A. Now, I don't know whether it was on that particular occasion or a latter occasion.

Q. You saw him later? A. I have seen Jack several times.

Q. The next time you saw him, do you recall what the conversation was about? Did you see him around October 1st? A. Yes, I believe I did when I had been using Gould & Preisner.

Q. Did you mention Gould & Preisner during that conversation, or did he mention them? A. He said that he was very unhappy about the fact that I was using non-union electricians; that I should have notified him before I  
166 hired non-union electricians.

Q. Would you expand the conversation, what took place between the two of you, what you said? A. When Jack came on the job—

Mr. Mahoney: What you said.

Trial Examiner Bellman: Gentlemen, when making an objection, will you refer your objection to me.

Mr. Mahoney: I make an objection now and ask him to answer the question: What was said, and not elaborate.

Trial Examiner Bellman: I will overrule the objection.

Mr. Mahoney: Save an exception.

Trial Examiner Bellman: Go ahead with your answer.

A. Jack, I refer to Mr. Fisher as Jack, that is the boy I know him best—Jack says that he noticed that I am using electricians that were non-union; that I agreed with him I wouldn't; he said, "Why don't you use the men I sent you?" I said, "One of the men you sent me came here; said that he was requested to come here, but that he didn't want to do any work in that territory."

I said, "Jack, why don't you sign up Gould & Preisner into the union?" He says, "I am willing to sign them up," he said, "but they will not." I said, "Jack, it would save me a lot of trouble if you could sign them up." Jack says, "They are—Mr. Gould and Mr. Preisner, are friends of mine, personally," he says, "I have no objection to  
167 them, personally," he says, "but I want to get as much business away from their firm as possible."

Q. Nothing else said in that conversation? A. I believe not.

Mr. Mahoney: Object to that and ask it be stricken. That is purely competition. That is true in business. That is true in every avenue of life, we take business away from one or the other; nothing illegal about that.

Trial Examiner Bellman: Motion denied.

Mr. Mahoney: Save an exception.

Q. (By Mr. Fousek) Along about November, did you have another conversation with Mr. Fisher, about the first part of November? A. About the first part of November, I met Jack at the West 40th Avenue project.

Q. Was anyone with him? A. He was accompanied with Clyde Williams, Clifford Goold, and a fourth member, which I believe was the drain layers union.

Q. Was that Mr. Clifford Goold of the Building Trades Council? A. That is right.

Q. Do you know who Mr. Clyde Williams represents, or what he does? A. Mr. Fisher introduced him to his boss.

Q. You understood, did you not, that he was a  
168 union representative of some sort? A. That is right.

Q. Will you tell us what was said during that conversation by any of the parties and by yourself. I would like to have the conversation as complete as you can remember it. A. Well, Mr. Fisher started out the conversation by introducing me to Mr. Williams and Mr. Goold. He says that they were there to talk to me about using all union labor. Somehow or another, we got to talking about the house that we were in which was at West 40th, and I



was told that the—that he had found out that the plasterers were non-union on that job. Clifford said that he done better work in his day when he was a plasterer than was done on those walls at that time. Then they said, "We won't discuss this building; we have no interest in this building, but for your further work, for the project at 45th, we would like you to use only union labor."

Q. Did Mr. Williams say anything? A. Mr. Williams' only comment was on the kind of electrical work that was shown in the basement of that house after I had called his attention to it and stated he wouldn't have it in his own house.

Trial Examiner Bellman: Which house was that?

The Witness: That is the West 40th.

Q. (By Mr. Fousek) What else was said, if anything, about the West 45th Street job? A. I believe the  
169 entire conversation was that I should not use non-union men, one organization was Gould & Preisner, and another was a cement man that I had employed.

Q. Did they make any statements at all as to what action they might take? A. No, they did not; they said that they would try to get together with me and make proper arrangements so there would be no trouble.

Q. On your 45th Street job, were any of your employees ever pulled from that job?

Mr. Hornbein: We object to that leading and suggestive question. This is his own witness. He has no right to cross-examine him.

Trial Examiner Bellman: Read the question.

(Last question here read by the reporter.)

Mr. Hornbein: We don't know what that means, anyway.

Trial Examiner Bellman: Reframe your question.

Q. (By Mr. Fousek) Did you have any carpenters working for you? A. Yes, I do.

Q. How many? A. I have on and off from one to four.

Q. Did you ever have one working for you by the name of John Moller? A. Yes, I do.

170 Q. Was he working for you on or about the period we are discussing? A. Yes, he was working for me.

Q. Did he continue to work uninterruptedly? A. About—he left there on the afternoon of one day near the first of November.

Q. He just left your employment. Did you talk to him about—

Mr. Hornbein: Wouldn't make any difference if there was any conversation between this witness and Moller, Moller is not one of the respondents here. There is no evidence that any respondents were present, or any of their representatives present. It is purely hearsay and it isn't competent evidence, and further, I think Mr. Moller is here in this court today. Yes, he is.

Trial Examiner Bellman: The objection is overruled.

The Witness: Will you repeat the question?

(Last question here read by the reporter.)

A. Yes, I spoke to him as to why he was leaving.

Q. (By Mr. Fousek) Will you tell the substance of your conversation with John Moller? A. He said he was leaving so that he would not be in jeopardy with the union.

Q. What did you say? A. I says, "That is your privilege." I says, "You can stay on if you want to."

171 And what did he say? A. He replied he still felt he didn't want to cause any trouble with the local.

Q. Anything further? A. That was about all that was said between John and I.

Q. Do you know a Mr. Johnson? A. Yes, I do.

Q. Who is he? A. Mr. Johnson represents the carpenters' union.

Q. Did you talk to Mr. Johnson on the day that morning John Moller left your employ, or previous to the time he left? A. Just prior to the time he left.

Q. Will you tell me the substance of your conversation? A. Mr. Johnson called me and asked—told me that he was pulling the carpenter from the job.

Q. This is the 45th Street job? A. That is right.

Q. Go ahead. A. I asked him why and he said because there is non-union men working there. I said, "By what authority do you pull him from this job?" He says, "By my own authority." And I says, "What do you mean 'by your own authority'?" He says, "We don't operate under Federal law in this State, but we have a state ordinance which we abide by." I says, "Suppose John don't

172 want to leave." He says, "That is his privilege," he says, "but if he doesn't, we can fine him for that."

Q. That was all that was said? A. That was all.

Q. Did you later talk to Mr. Fisher about your 45th and 40th Street jobs? A. I called Mr. Fisher by phone.

Q. Will you tell me what was said?

Trial Examiner Bellman: Can you establish the approximate time?

Mr. Fousek: I beg your pardon.

Q. (By Mr. Fousek) Yes, will you tell us about when that was? A. About three days after John was pulled from the 45th Avenue job, I called Mr. Fisher by phone.

Q. Will you tell us what was said in that conversation?

A. Well, I asked Mr. Fisher why John Moller had been pulled from the 40th Avenue job, the other job. And of course, he said he didn't know why. I mentioned the fact that the electricians had left that job and asked him if he had pulled them, and I recollect that he said no. Now, although I have said that he had said yes.

Mr. Mahoney: Mr. Examiner, I presume he meant in the other trial.

Trial Examiner Bellman: Read that last answer.

173 (Last answer here read by the reporter.)

Trial Examiner Bellman: Was Moller on the 40th or 45th Street job?

The Witness: Your Honor, I had him on the West 40th Avenue job after he was pulled from the 45th Street job.

Trial Examiner Bellman: He was on the 45th Avenue job at the time of the conversation you had with him you testified about?



The Witness: That is right. He was gone for a couple of days and then he came back and then I sent him down to 40th Avenue.

Trial Examiner Bellman: I see.

Q. (By Mr. Fousek) Was there anything else said on your telephone conversation with Mr. Fisher? A. Well, I asked Mr. Fisher if he couldn't continue at the 40th Avenue job, and he said, it was his contention that there would be no dispute whatsoever at the 40th Avenue; that whatever happened down there had nothing to do with my further work on the 45th Avenue job. So I asked Mr. Fisher if I couldn't get the electricians back as fast as they had left, and he said he would try. By the way, the electricians were union on this other project.

Trial Examiner Bellman: Which one was that?

The Witness: On 40th Avenue.

Trial Examiner Bellman: This all happened on 40th Avenue?

174 The Witness: That is right. And Mr. Fisher said that if I would give my word to sign up with Clifford Goold and the Building Trades Council that he would see to it that my men would be back to work as soon as possible.

Q. (By Mr. Fousek) Anything else? A. I believe that is about all.

Q. To clear up the situation as regarding John Moller a little further: He was pulled from your 45th Street job?

Mr. Mahoney: Object—

Mr. Williams: Object to the form of the question.

Mr. Mahoney: He said he left of his own discretion.

Trial Examiner Bellman: Reframe your question.

Q. (By Mr. Fousek) John Moller left your 45th Street job? A. That is right.

Q. Did he go back to work for you? A. Later.

Q. Where? A. At 40th Avenue.

Mr. Mahoney: He has already testified—

Mr. Fousek: Mr. Examiner, I am trying to clear up—

Mr. Mahoney: He has already testified that he went back in about two days; has been asked and answered.

Trial Examiner Bellman: Proceed.

Q. (By Mr. Fousek) Did Mr. Moller leave your  
175 40th Street job? A. Yes, he left that, also.

Q. Did any other men working on 40th Street leave your job? A. A Mr. Joe Koontz, tile setter, a subcontractor, by the way, also left.

Q. Anyone else? A. He went out.

Q. Anyone else? A. The electricians left, of course. I don't know why.

Q. Did you have any further conversation with Mr. Fisher and Mr. Goold, or Mr. Williams regarding Gould & Preisner? A. No, I don't believe so.

Q. Did you have a conversation with Mr. Goold and Mr. Fisher or Mr. Williams regarding unionizing your operations? A. Yes, that was what I previously testified to which happened in the basement of 40th Avenue.

Q. Who discussed what?

Mr. Hornbein: I don't know what that has to do with this case. That is not within the scope of the complaint, or purview of the case, a completely separate matter; doesn't constitute a secondary boycott, or secondary strike. If he wants to sign up a contract with the union, he has got a perfect right, and the unions have a perfect right to induce him to. They don't allege that in their complaint at all.

Trial Examiner Bellman: Is this a conversation about which there has been testimony?

176 Mr. Fousek: I will withdraw the question.

Trial Examiner Bellman: All right.

Q. (By Mr. Fousek) Did you have an employee by the name of Michael Capra? A. He wasn't my employee. He was an employee of a subcontractor of mine.

Q. What was he? A. A plumber working for Louis Cook Plumbing Company.

Q. What job was he working on? A. On West 45th Avenue, on the roughing in at that particular time.

Q. That was during the period which has been under discussion? A. That is right.

Q. How long did he work for you? A. I believe altogether about a month and a half.

Q. Will you relate the circumstances of the termination of his work on this project?

Mr. Mahoney: If he knows?

Q. (By Mr. Fousek) If you know? A. The termination of the work was when it was completed, sir.

Q. I meant Capra's employment. A. His termination was when he had completed the project, completely.

Q. When he left your project, he was through with the plumbing work? A. That is right.

177 Q. During this period, was there any interrupting of your service? A. Yes, on the day that the carpenter had left.

Q. That was Mr. Moller? A. Mr. Moller. I was told—

Mr. Hornbein: We object to what he was told.

Mr. Mahoney: Purely hearsay.

Trial Examiner Bellman: I will sustain the objection unless the person is identified, at least.

Q. (By Mr. Fousek) Will you identify the person talking? A. My father.

Mr. Hornbein: We still object. It is still hearsay and it is still incompetent.

Trial Examiner Bellman: Sustained.

Q. (By Mr. Fousek) Do you have personal knowledge of the reason he left your employ?

Mr. Mahoney: He has already answered that; he said that he was told.

Trial Examiner Bellman: The witness has testified he left the employment when the job was completed. Now, are you referring to an interrupting—

Reframe your question.

Q. (By Mr. Fousek) Do you have any knowledge of the reason that Michael Capra's employment was interrupted? A. Only what my father told me.

178 Mr. Fousek: Only what your father told you. No further questions.

Mr. Mahoney: That is all as far as I am concerned.



*Cross-Examination.*

Q. (By Mr. Williams) You have testified at the time Mr. Johnson came to the West 45th Avenue job, when was that?

A. Approximately the first of November, yes.

Q. And your conversation with Mr. Johnson took place just as he was getting in his car and leaving the premises?

A. Before he had gotten in his car, yes.

Q. You were standing about on the sidewalk? A. I was talking to Mr. Tappan at the time, representative of the Public Service Company as to future construction in that neighborhood.

Q. Where were you standing? A. About, oh, I imagine 150 feet away from the porch of one of the houses.

Q. Mr. Moller then wasn't present at the time of that conversation? A. No.

Q. And then before you went in the house where you had your conversation with Mr. Moller on that occasion, Mr. Johnson left, did he not? A. Yes, Mr. Moller wasn't in the house, by the way, he was behind the house, getting ready to leave.

Mr. Williams: Getting ready to leave. That is all.

Mr. Mahoney: That is all as far as I am concerned.

Trial Examiner Bellman: There appears to be nothing further. The witness will be excused.

(Witness excused.)

Trial Examiner Bellman: Hearing will be in recess for five minutes.

(Whereupon, a short recess was taken.)

Trial Examiner Bellman: Hearing will be in order.

Mr. Fousek: Mr. Clyde Williams, will you take the stand, please.

J. Clyde Williams, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

*Direct Examination.*

Q. (By Mr. Fousek) Give your name, spelling it, please, to the reporter, and your address. A. J. Clyde Williams. You want the business address?

Q. Yes, please. A. 832 West 6th Avenue.

Q. What is your occupation, Mr. Williams? A. Business manager for local union No. 68, International Brotherhood of Electrical Workers.

180 Q. How long have you had that job? A. Since June, 1941.

Q. I hand you document which has been marked for the purpose of identification as Board's Exhibit 7. Can you tell me what that is? A. It is our By-Laws and Working Rules.

Q. Are those By-Laws and Working Rules in effect? A. Yes, sir; they are being revised.

Q. Mr. Fousek: Board's Exhibit No. 7 is offered in evidence.

Mr. Mahoney: Let me examine the exhibit first before I raise an objection.

Trial Examiner Bellman: You may have the witness on cross. Proceed.

Mr. Mahoney: Is there any specific section, or article that you desire to interrogate about, Mr. Fousek? May I ask that question? My previous objection here was, Mr. Examiner, that there is a lot of those by-laws in Exhibit No. 7 that was submitted to the witness that has no materiality, and I ask the attorney representing petitioner if there is any specific section that he desires to offer so I may examine the witness.

Mr. Fousek: I have offered the document in evidence generally, and I direct specifically the Board's attention, however to page 13, Article 13, General Laws, Section 6.

Mr. Mahoney: Wait a minute. Page 13, what?

181 Mr. Fousek: Article 13, General Laws, Section 6, page 14, I believe it is—I do not have the document before me. Section 7, and of course any and all other provisions which may be material.

**Trial Examiner Bellman:** Read that, please.

(Last statement of counsel here read by the reporter.)

**Mr. Mahoney:** That is a pretty broad offer, but anyway, I will ask, Mr. Williams, looking at this—showing you document, marked Exhibit 7, those by-laws here, I notice on the cover they were dated, "Approved January 19, 1944," is that correct, Mr. Williams?

**The Witness:** That is right.

**Mr. Mahoney:** Are these laws—are these by-laws covering your organization, are they in the course of changes?

**The Witness:** Yes, they are. They have been for several months and haven't—they haven't been approved by the local as yet. They were sent to the international for approval and we just received them back from our international office. They haven't gone to a special meeting of the union yet.

**Mr. Mahoney:** Now, Mr. Williams, why are these by-laws amended, changed or in any way altered, for what purpose, and for what reason, Mr. Williams?

**The Witness:** I don't recall what changes there are; several changes in the by-laws that we thought it would be necessary to change, several of the sections to conform with the present law that we have before us.

182 **Mr. Mahoney:** Now at this time, if Your Honor please, we desire to object to this offer of the exhibit in evidence, because there is a large portion of these by-laws that are incompetent, irrelevant and immaterial for any purpose; they shed no light upon the facts of this case, and no bearing in any way, shape or form, and secondly, with reference to Article 12, General Laws, Section 7, page 13—

**Trial Examiner Bellman:** I think it is Article 13, instead of 12.

**Mr. Mahoney:** Article 13, Mr. Examiner, you are correct. I believe the specific portion of the by-laws referred to the examiner by the counsel is as follows:



"Any member failing to report a violation of any agreement or who works with a non-union workman, or who goes through any picket line without permission, shall be subject to such penalty as decided by the Executive Board."

Trial Examiner Bellman: Section 6, I believe was also pointed out.

Mr. Mahoney: Did you point out No. 6, too?

Mr. Fousek: Yes.

Mr. Mahoney: No. 6: "Any member who refuses to quit work on any job or in any shop when being notified by the Business Manager to do so shall be penalized as decided by the Executive Board."

Now, under the law and under the Taft-Hartley 183 amendment to the National Labor Relations Law, the unions have a right to make rules and regulations governing their membership, and for the further reason that there is no proof so far all through this testimony up to date that there is any violation of the interstate commerce law.

Mr. Williams Your Honor, I would like to comment just a moment on that same subject. I think it is particularly important here, because we may be setting a precedent which will govern the admission of all of these documents. I think it would be a most unfortunate precedent to admit by-laws probably 90 percent or more that has absolutely nothing to do with this case and when we get into the general constitution, if we ever get that far, of these unions, there we will have page after page of material, much of it dealing with matters entirely covering the business which they are in, and therefore, we ask that counsel designate the section which he is offering.

First, we ask this offer be rejected, as it should be, and then if he wants to make an offer on specific sections which are material in this case, if there are any, then we will, of course, have an appropriate objection to make at that time, but now as the offer now stands, it should be rejected not only because none of the sections are material, but also be-

cause none of the sections which he has now offered before  
Your Honor have any bearing whatever on this case.  
184 Mr. Mahoney: And for the further reason, and

it will be my concluding objection—for the further reason there is no evidence in this case that any member of the electrical union refused to cease work, or was affected by Section 6. Furthermore, there was no evidence that any member of the electrical workers union went through the picket line or was subject to any penalties mentioned in Section 7 heretofore referred to.

Trial Examiner Bellman: Overrule the objection. Admit in evidence Board's Exhibit No. 7. You have the duplicate? Duplicate is also admitted.

(Thereupon document above referred to previously marked as "Board's Exhibit No. 7, Witness Goold," for identification was received in evidence.)

Mr. Fousek: That is all.

Mr. Mahoney: That is all, Mr. Williams.

Trial Examiner Bellman: Any other questions now of this witness from any of the parties? There appear to be none. Witness is excused.

Mr. Mahoney: Mr. Williams desires to be excused permanently.

Mr. Fousek: I have no objection to that whatsoever.

Mr. Mahoney: You may be excused, then, Mr. Williams.

(Witness excused.)

Mr. Fousek: Call Mr. Johnson.

185 **A. J. Johnson**, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

*Direct Examination.*

Q. (By Mr. Fousek) Will you give your name, spelling it, to the reporter, please and your address? A. A. J. Johnson, business address 1947 Stout Street.

Q. What is your occupation, Mr. Johnson? A. Business representative Carpenters Local No. 55.

Q. How long have you had that business position?  
A. Since July 1, 1947.

Q. I hand you document marked as Board's Exhibit No. 6. Could you tell me what that is, sir? A. That is the by-laws of Local Union 55, United Brotherhood of Carpenters and Joiners of America.

Q. Are those presently in effect, sir? A. They were revised last April, 1947.

Q. You have a copy of the revised Constitution and by-laws, sir? A. I have not.

Q. Is there any copy of the revised Constitution and by-laws? A. We have—this is the only copy we have at the present time.

Q. That is a copy of your Constitution and by-laws which you say have been revised? A. They were revised 186 in April, 1947.

Q. Do you have a copy of the revision? A. We have not yet.

Q. Is there any place where any revisions of that document may be found in writing? A. There isn't at the present time.

Q. When did you say you revised these? A. They were revised last April.

Q. Do you know whether or not you submitted this copy of Board's Exhibit 6 to the National Labor Relations Board in compliance with the provisions of the Taft-Hartley Act? A. This copy was supplied to the N. L. R. B. in compliance with the laws and our affidavits.

Q. And in that submission, did you not state that these were the copies—this was the Constitution and by-laws of Local Union No. 55 which were in effect? A. I don't remember whether we said they were in effect or not. That was the copy that was turned in to the N. L. R. B.

Q. Can you tell me what the revisions of that Constitution and by-laws are, what revisions have been made?



A. No, I believe not, because the General Executive Board hasn't met yet, and we do not know.

Q. You say the General Executive Board hasn't met yet; do they have to approve the revisions? A. They do.

187 Q. That is the standing Constitution and by-laws working rules at the present time? A. Those are the ones we have in our local at the present time.

Q. I hand you copy of document which has been marked for the purpose of identification as Board's Exhibit No. 6A, and ask you if you can tell me what that is. A. That is the General Constitution and by-laws of the United Brotherhood of Carpenters and Joiners of America.

Q. Are those laws in effect? A. They went in effect January 1, 1947.

Mr. Fousek: Board's Exhibits 6-A and 6, are offered in evidence.

Mr. Williams: We object to those on two grounds: First, that all of the union respondents here involved have a perfect right to formulate—they are voluntary organizations organized under the rights of free speech and they have the right to formulate and draw up such constitutions and by-laws as they wish. That being so, what those provisions may be has no bearing on this case. And for the further reason that the offer is too indefinite and vague, offers admittedly a large portion of material which can have no possible bearing on this case, and simply confuses the record, confuses the issues entirely.

I want to call Your Honor's attention to the provisions of the by-laws which he has now offered. They deal with such matters as funerals, donations for, and have, of  
188 course, no bearing on this case, and other donations of various kinds to persons who are disabled, with jurisdictional matters, nothing is involved here about jurisdiction, with labels, with the Labor Day parade, with beneficial members, and special claims of membership, as to which there is nothing in this case, with the order of procedure, their conventions, with the dues, with the property

of unions, with the duties of the national officers of this brotherhood.

Your Honor, we submit that unless the offer is made in such a way as to designate the sections which counsel claims are material in this case, it should be rejected, and should be chose to make such offer, we feel that even that offer would be objectionable on the Constitutional ground which I have already stated.

Trial Examiner Bellman: Any further objection? Overrule the objection. The documents are admitted as Board's Exhibit No. 6, and Board's Exhibit No. 6A, with their respective duplicates.

(Thereupon documents above referred to previously marked as "Board's Exhibits Nos. 6 and 6A, Witness Gould," for identification were received in evidence.)

Trial Examiner Bellman: Any further questions of Mr. Johnson?

*Cross-Examination*

Q. (By Mr. Williams) Mr. Johnson, do you know  
189 whether the Constitution and by-laws contained in what has been marked as Exhibit 6-A are still in effect? A. The general Constitution and by-laws of our Brotherhood are still in effect, as far as I know.

Q. As far as you know? A. As far as I know.

Q. Who can amend them? A. The General Exacutive Board of the International Union.

Q. You are not on that board, are you? A. No, sir; I am not.

Mr. Williams: That is all.

Q. (By Trial Examiner Bellman) Have you received any more recent, or amended copies of this Constitution and by-laws? A. We have not at the present time. The General Executive Board meets twice a year. They are in session at the present time and will be revised, I understand.

Trial Examiner Bellman: Any further questions?

Mr. Mahoney: No further questions.

Trial Examiner Bellman: Witness excused.

Mr. Mahoney: May I ask this witness be excused from further attendance at the hearing?

Trial Examiner Bellman: I have nothing further with the witness. Do you?

Mr. Fousek: I have no objection.

(Witness excused).

190 Mr. Hornbein: We would also like to request that Clifford Gould be excused. He has already testified.

Mr. Fousek: I have no objection to that. Neither one of these witnesses are under subpoena, all union representatives—

Trial Examiner Bellman: When I have excused a witness, as far as I am concerned, the witness is excused unless there is some request the witness be retained or recalled. I am excusing the witness for the purpose of the hearing.

Mr. Mahoney: Any of our witnesses, we don't require a subpoena, and they call them, we have no objection to their calling them.

Mr. Fousek: Mr. John Moller.

John Moller, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

*Direct Examination*

Q. (By Mr. Fousek) Would you give your name, spelling it, please, and your address to the reporter? A. John Moller.

Q. What type of work do you do? A. Carpenter work.

Q. Are you a member of a union? A. I am.

191 Q. What union? A. 750 Junction City, Kansas.

Q. What organization is that affiliated with? A. Carpenters Union is all I know.

Q. Do you have a work permit? A. I have a working permit here, work card.

Q. From what union did you receive that card? A. 55.



Q. Local 55 of the Carpenters. Do you know Mr. LoSasso? A. I do.

Q. Have you ever worked for him? A. I have.

Q. When? A. Ever since I come to Denver.

Q. When was that? A. About two years and a half.

Q. Were you working for Mr. LoSasso around the first of November, last year? A. I was.

Q. What type of work were you doing for him? A. Carpenter work.

Q. Where were you working? A. On that 40th Avenue, 45th.

Q. Do you know Mr. Johnson? A. I do.

192 Q. Who is he? A. Business agent for the union here.

Q. Carpenters Union? A. Yes, sir.

Q. Do you recall whether or not on or about November 1, 1947, at your place of work for Mr. LoSasso, you saw Mr. Paul Johnson? A. I did.

Q. Did you have a conversation with him? A. Not very much.

Q. What time of the day was it? A. Little before 12.

Q. Was anyone else present? A. No.

Q. Where were you? A. In the house.

Q. What did Mr. Johnson say to you? A. Said I would have to come off the job until they got it straightened up, pulled me off.

Q. What did you do? A. I did.

Q. Did what? A. Picked up my tools and left.

Q. Did you communicate the fact you were leaving to anyone? A. No, I never said nothing to anybody.

193 Q. Did you talk to either of the LoSassos? A. Oh, afterwards; after I had my tools in the car.

Q. Who did you talk to? A. Jerry.

Q. Did you tell him what happened?

Mr. Hornbein: Object to that.

Mr. Williams: I object—

Mr. Mahoney: I object—

Trial Examiner Bellman: Usually we permit the question to be asked before we make an objection.

Mr. Hornbein: It sounded like counsel was going to put some words in his mouth about a certain subject.

Trial Examiner Bellman: Suppose we allow the question—I will admonish counsel for the Board to frame a proper question and counsel for the respondents to wait until the question is finished before making an objection. Let's proceed in an orderly way.

Mr. Fousek: Would you read the question, please?

(Last question here read by the reporter.)

Mr. Hornbein: We object to that.

Trial Examiner Bellman: Just a minute. I only heard two words and then counsel for the respondents interrupted. Would you state your question to the witness.

Q. (By Mr. Fousek) Did you discuss the conversation with Mr. Johnson with Mr. Jerry LoSasso?

Mr. Williams: We object to that question.

194 Trial Examiner Bellman: Overrule the objection.  
The Witness: Did I what?

Trial Examiner Bellman: Read the question to the witness.

(Last question here read by the reporter.)

A. About Mr. Johnson?

Q. (By Mr. Fousek) Yes. You understand my question, sir? A. There wasn't much said, only said, "I guess—"

Mr. Williams: This answer is not responsive.

Q. (By Mr. Fousek) Mr. Moller, just answer my question whether or not you discussed with Mr. LoSasso— A. No.

Q. — your conversation with Mr. Johnson? A. No.

Q. Did you tell Mr. LoSasso that you had talked to Mr. Johnson? A. No.

Mr. Mahoney: Object to that question on the ground that it is leading?

Trial Examiner Bellman: Overrule the objection.

Mr. Hornbein: He already answered. He said no. Here we go back to the same proposition where counsel is trying to cross-examine his own witness.

Mr. Fousek: I am not trying to cross-examine my own witness.

Mr. Hornbein: He has already answered the question. He said he had no conversation with LoSasso.

Mr. Fousek: I think argument is unnecessary.

Trial Examiner Bellman: Just a moment, we have the ruling.

Q. (By Mr. Fousek) Did you later return to the employment of LoSasso? A. I did, on a different job.

Q. When? A. Three or four days after.

Q. Did you have another conversation with Mr. Johnson on your return? A. I did.

Q. And approximately how long after your return did you have this conversation with Mr. Johnson? A. Next day, I think it was.

Q. Where were you at the time? A. On the other job, 45th Street, 40th Street; 40th Street.

Q. Were you in one of the houses? A. I was.

Q. Did you have a conversation with Mr. Johnson in the house? A. I did.

Q. Was there anyone else present there? A. No.

Q. Just tell the examiner what Mr. Johnson said, and what you said while in that house. A. He said I would have to go, and he says, "I could fine you for this." That is all that was said; said I would have to go off the job.

Q. What did you do, sir? A. Left.

Q. Did you discuss that conversation with either of the LoSassos? A. LoSasso wasn't there.

Q. Do you know Michael Capra? A. Slightly.

Q. Was he employed for LoSasso at the time you were working? A. On the first job, he was.

Q. Did you discuss this conversation with Mr. Johnson with Mr. Capra?

Mr. Hornbein: Same objection.

A. No, I didn't.

Trial Examiner Bellman: Overrule the objection.



A. I didn't.

Mr. Fousek: That is all.

*Cross-Examination*

Q. (By Mr. Williams) Do you remember testifying before Judge Symes, Mr. Moller? A. I do.

Q. Do you remember stating there that you didn't remember the words that were used in this conversation?

197 Trial Examiner Bellman: Which conversation was that?

Mr. Williams: In the second conversation with Mr. Johnson. A. Well, there wasn't any more said than what I said just now.

Q. (By Mr. Williams) That doesn't answer the question. Do you remember testifying before Judge Symes that you didn't know just what was said on that occasion? A. I remember saying that, yes.

Q. You do. And that is still true, isn't it? A. Sure.

Mr. Williams: That is all.

Trial Examiner Bellman: Any further questions?

Mr. Fousek: No.

Mr. Mahoney: None as far as I am concerned.

Mr. Hornbein: That is all.

Trial Examiner Bellman: Witness is excused.

Mr. Fousek: Thank you very much, Mr. Moller.

(Witness excused.)

Mr. Fousek: Michael Capra.

**Michael Capra**, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

*Direct Examination*

Q. (By Mr. Fousek) Would you give your name, spelling it, please and your address to the reporter?

198 A. Michael Capra, C-a-p-r-a; address is 2772 West Dunkeld Place.

Q. Are you a plumber, Mike? A. Yes, sir.

Q. How long have you been a plumber? A. Six years; seven years, something like that.

Q. Belong to the union? A. Yes, sir.

Q. How long have you belonged to the union? A. Since I was a boy, seventeen years old. Proud of it.

Q. Do you know LoSasso? A. Yes, sir.

Q. Did you ever do any work for them, or subcontracting? A. I am not no master plumber; I just work for Louie Cook.

Q. Did you ever do any work on homes being erected by the LoSassos? A. The homes on West 40th and West 45th.

Q. Do you remember working on those homes, or one of the homes in November of last year? A. Well, I just don't remember.

Q. Do you remember Mr. Moller working on those homes? A. Who?

Q. Mr. Moller, the witness who just testified? A. Yes, we worked on the West 40th and West 45th.

199 Q. Were you working at the same period of time, approximately? A. When was that?

Q. Were you working on those homes while Mr. Moller was there? A. Yes.

Q. Do you remember your work being interrupted on those homes? A. No, sir.

Q. Did you work constantly from the first day you began your employment on the LoSasso homes up until the job was finished without missing a day? A. I had to go on an emergency job; I had to miss about a couple of weeks.

Q. Just a moment. A. I went to the Pepper Packing Company.

Q. So you were gone for several weeks? A. Couple of weeks.

Q. Do you remember the morning your employment was interrupted?

Mr. Mahoney: Just a moment.

Q. (By Mr. Fousek) Do you remember the morning of the day your employment was interrupted?

Mr. Mahoney: Just a moment. The witness has answered—the witness didn't say it was interrupted. He said he had to go on other work.

Trial Examiner Bellman: Reframe your question.

Q. (By Mr. Fousek) Do you remember the morning, what time of day you went to work for the Pepper Packing Company? A. No, I don't. I know it was an emergency job; I had to get going. I don't remember no dates. I don't remember that.

Q. Now, on the morning that you went to the Pepper Packing Company, did you talk to anyone about the emergency there? A. No, they called in. I don't know. It was an emergency job.

Q. Who called in? A. I don't know. Pepper Packing Company. Talked to Harold Cook.

Q. Who talked to Harold Cook that morning? A. I don't know. He told me about going on this emergency job.

Q. You had a conversation with him? A. Harold stated they are going to start pouring concrete, and away I went.

Q. During that morning when you were getting ready to go to work for the Pepper Packing Company, was the operation of the LoSasso job discussed; was the LoSasso job discussed?

Mr. Hornbein: Of course that wouldn't make any difference whether that was discussed between this man and his employer, Harold Cook. Harold Cook doesn't belong to the union. He is his employer.

Trial Examiner Bellman: Overrule the objection. The witness has already answered.

201 (By Mr. Fousek) You didn't hear anything about the LoSasso job that morning? A. No, I didn't hear anything about that job when I went to Pepper Packing Company. I went to pick up my tools.

Q. Do you recall a phone call being received at the Louie Cook Plumbing Company's office with reference to the LoSasso job?

Mr. Hornbein: How could he know whether a phone call was received at the Louie Cook Plumbing Company, and



what difference would it make unless shown to be by one of the respondents?

Trial Examiner Bellman: Overrule the objection.

A. I didn't receive no phone call.

Q. (By Mr. Fousek) Did you hear about a phone call being received?

Mr. Hornbein: We renew the objection. That is ever getting worse, what he heard about.

Trial Examiner Bellman: Sustained.

Q. (By Mr. Fousek) Were you informed at any time that the LoSasso job had been pulled? A. I heard rumors about the call.

Q. When did you hear rumors about the call? A. I don't remember. I know I went on the emergency job, that is but a week when the electricians got on. I didn't think nothing of it. I think I was there a month. I don't know, something like that.

Q. You were there a month; you were working there a month, and then you heard the job was pulled? A. I guess a month.

Q. With reference to this morning when you went to the Pepper Packing Company, were you informed that day that the job had been pulled?

Mr. Williams: We object to that question. It has been asked several times now.

Trial Examiner Bellman: Overrule the objection.

A. Answer?

Q. (By Mr. Fousek) Yes, please. A. Well, I didn't tell Harold Cook that the job was being pulled, or anything like that. He told me there was an emergency job. I didn't discuss it with nobody. I felt another job is another job.

Q. Did Mr. McDonough tell you that job was pulled? A. No, sir.

Mr. Williams: Object to that as cross-examining his own witness.

A. No, sir.

Trial Examiner Bellman: The objection is overruled.

Q. (By Mr. Fousek) When did you go back to work for LoSasso? A. When I got through with the emergency job, I went right back.

Q. Who told you to go back? A. I don't know. Somebody called over the phone. I think it was Jerry and asked when I was coming back. I says when I get through with the Pepper Packing Company, I will be back. I says, "I am on an emergency job."

Q. You returned after that? A. Yes, sir.

Q. Approximately how long were you away from that job? A. I guess two weeks; I am not sure, it might have been sooner.

Mr. Fousek: That is all.

Mr. Mahoney: That is all.

Mr. Hornbein: No questions.

Trial Examiner Bellman: There appears to be nothing further of the witness. The witness is excused.

(Witness excused.)

Trial Examiner Bellman: Do you have another witness? It is now 20 minutes after twelve.

Mr. Fousek: We have another short witness.

Mike.

**Michael P. McDonough**, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

204 *Direct Examination.*

Q. (By Mr. Fousek) Would you give your name, spelling it, please and your address to the reporter? A. Michael P. McDonough, M-c-D-o-n-o-u-g-h.

Q. What is your business? A. Business representative and financial secretary of Plumbers Local Union No. 3.

Q. How long have you had that position? A. April, 1942.

Q. I hand you a document which has been marked for the purpose of identification as Board's Exhibit 8-A and ask you if you can tell me what that is? A. That is the Con-

stitution, By-Laws, Rules of Order and Jurisdiction of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada.

Q. Is this Constitution and By-Laws presently in effect?  
A. That is true.

Q. Now, I hand you a document which has been for the purpose of identification marked as Board's Exhibit 8. Can you tell me what that is? A. This is the Constitution and By-Laws adopted May 15, 1940. Parts of this are in effect and parts are not. Due to the war, a lot of this was outmoded, but we continued on and completed certain projects so we could carry on. And in filing with the government, we pointed out different parts of the Constitution and a lot of the By-Laws that were outmoded.

Q. You drew a cross through those sections, did you, Mike? A. The ones that we filed with the National Labor Relations Board on that question there, I pointed out in that parts of our local by-laws and the national by-laws—

Q. That were not in effect? A. That were in effect—in effect, I believe, yes.

Q. Didn't you cross those paragraphs, or sections, which were no longer in effect out?

Mr. Mahoney: What are you whispering about?

Mr. Fousek: I am not whispering about anything, sir.

Q. (By Mr. Fousek) Would you go through that, Mr. McDonough, and point out the sections which are not in effect? A. I would have to read the entire document to find out.

Mr. Mahoney: I submit the witness ought to have some time on that question.

Trial Examiner Bellman: Suppose we take a recess, then, for lunch.

The witness will have until two o'clock. The hearing is in recess until two o'clock.

(Thereupon an adjournment was taken until 2 p. m. of the same day.)



206 *After Recess.*

(Whereupon, the hearing was resumed, pursuant to recess, at 2 o'clock p.m.)

**Trial Examiner Bellman:** Hearing will be in order.

**Michael P. McDonough,** in continuation of his testimony heretofore begun, having been previously duly sworn, testified further as follows:

*Further Direct Examination.*

**Q** (By Mr. Fousek) Mr. McDonough, handing you Board's Exhibit 8-A. This is the Constitution and By-Laws which are in effect today without modification? **A.** That is right.

**Q.** Now, directing your attention to Board's Exhibit 8, and referring specifically to the request which I made prior to the noon recess, would you point out to me those sections which have as of this date been modified? **A.** The ones that are not being enforced—this part here, which is a seven-hour day and a five-day week.

**Q.** There is a blue pencil cross through them, sir? **A.** No, there isn't. That is this part here (indicating). That was due to the War effort to get these jobs completed, working eight hours a day.

**Q.** Now, Section 2 on page 29 is not in effect? **A.** No.

**Q.** Section 4 on page 29 is not in effect? **A.** That  
207 is right.

**Trial Examiner Bellman:** You said no one time and that is right the next time. Do you mean in both cases—

**The Witness:** These are not in effect.

**Q.** (By Mr. Fousek) 2 and 4 are not in effect on page  
29?

**Trial Examiner Bellman:** What was the one with the 7-hour day?

**The Witness:** That was the first one, Section 2.

**Q.** (By Mr. Fousek) Now, Section 25, on page 33 is not in effect? **A.** That is right.

Q. Now, directing your attention to page 29, there is a pen line through the third from the last and fourth from the last lines. Those sections, or parts of sections are not in effect? A. That is right.

Q. The rest of the agreement is in effect? A. Yes, sir.  
Trial Examiner Bellman: You mean—

Q. (By Mr. Fousek) I mean the Constitution. A. That is the Working Rules and By-Laws. That is not the Constitution. That is the Constitution over there (indicating).

Q. That is Board's Exhibit No. 8 we are talking about? A. That is right.

Mr. Fousek: Board's Exhibit 8 and 8-A, for identification, are offered in evidence.

208 Mr. Hornbein: We object to those for several reasons.

With reference to Exhibit 8-A, if Your Honor please, this purports to be Constitution, By-Laws, Rules of Order and Jurisdiction of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry, an organization which is not a party to this proceeding and has not been referred to in the evidence in any manner, and accordingly, the— and what may or may not be its Constitution and By-Laws is completely an immaterial matter to this hearing. I don't know for what purpose the counsel for the government offers these exhibits, but certainly Exhibit 8-A, being the Constitution of an organization which isn't— hasn't had anything to do with this proceeding, isn't represented here, is not admissible and shouldn't be submitted.

And further, we object to both exhibits on the grounds they simply are the Constitution and By-Laws of a voluntary organization of working men. Working men have the right to form themselves into a voluntary organization and to set up their own by-laws, and working rules. There is nothing in the Taft-Hartley law which prohibits them from that. As a matter of fact, that right is specifically guaranteed by the Taft-Hartley law and there is no show-

ing at all in the evidence that these Constitutions or By-Laws are in any way infringing on or violating any provisions of the Taft-Hartley law, or any other law.

209 As a matter of fact, I go further Your Honor, and point out there is no evidence at all that any representative, any agent, or even any member of the plumbers union has in any way engaged in any unfair labor practice, or has been connected with any unfair labor practice, and I say that these exhibits have no probative value and they are completely immaterial to the issues before this tribunal and they should not be admitted into evidence.

We ask that counsel for the Board state what sections of those Constitutions he thinks are material. If it appears there is some provision in the Constitution which is material, it can very well be read into the record. No use cluttering up the record with a lot of things that have nothing whatsoever to do with the issues.

Trial Examiner Bellman: I take it in your oral argument, or brief, you will point out any specific sections?

Mr. Fousek: Yes, I will do that.

Trial Examiner Bellman: As they become material?

Mr. Fousek: Yes, sir.

Trial Examiner Bellman: Overrule the objection and admit these documents in evidence, with their duplicates, as Board's Exhibit 8 and Board's Exhibit 8-A, respectively.

(Thereupon documents above referred to previously marked as "Board's Exhibits Nos. 8 and 8-A, Witness Gould," for identification were received in evidence.)

210 Mr. Fousek: That is all with this witness, Your Honor.

Mr. Hornbein: Just one question, Mr. McDonough.

*Cross-Examination.*

Q. (By Mr. Hornbein) With reference to Board's Exhibit 8, would you just tell in your own words what is the



present status of this Constitution and By-Laws of Denver Unity Local No. 3, with reference to its existing application and enforcement?

Trial Examiner Bellman: Do you have 8 or 8-A in your hand?

The Witness: I believe 8. 8-A.

Mr. Fousek: Will you read the question, please?

(Last question here read by the reporter.)

A. With reference to that local by-laws entered there, each has the 5-hour day—or the 7-hour day and the 5-day week which was voted out by the local, due to the fact that we were trying to complete these jobs. The double time, which situation was eliminated to complete these jobs. The given wage in there is outlawed by contract entered into on different occasions; that wage rate that is in there is away below what we receive at the present time. The rest of the working rules in there, we are abiding by.

Q. Are there present plans to revise that Exhibit 8? A. A committee was selected by the chairman of the local union, and that was delayed due to the fact this new law came in, and we decided to wait and see whether or not we came under the Taft-Hartley law. We were under the 211 impression that they did not cover building construction, so that committee has not acted on the revision of our present local by-laws.

Mr. Hornbein: That is all.

Trial Examiner Bellman: Any other questions?

Mr. Mahoney: No further questions as far as I am concerned.

Trial Examiner Bellman: There appear to be no other questions. The witness is excused.

(Witness excused.)

Mr. Fousek: Mr. Examiner, at this time, the Board is ready to rest, except for the fact Mr. Gould has not yet returned with the records we requested him to bring here. We requested the information yesterday.

Mr. Williams: Since our case will be comparatively short, we are willing to recess to accommodate counsel.

Trial Examiner Bellman: We will take a five-minute recess.

(Whereupon a short recess was taken.)

Trial Examiner Bellman: The hearing will be in order. Has the the information which the Board was to produce for purposes of cross-examination, through Witness Gould, been received yet?

Mr. Fousek: Not yet. All of it has not been received.

Trial Examiner Bellman: The Board is not prepared to close its case at this time?

Mr. Fousek: No.

Trial Examiner Bellman: All right. Do you have any suggestions to proceed, or recess?

212 Mr. Fousek: I am perfectly willing that we go ahead unless they are adverse to so doing.

Mr. Mahoney: No, we would like to go ahead, Mr. Examiner. Also there is another witness that we desired for the respondents' case that was to bring in certain information.

Trial Examiner Bellman: It is satisfactory to respondents to proceed then before the Board has completed on this one point. That may be done.

**J. R. Fisher**, a witness called by and on behalf of the respondents, being first duly sworn, was examined and testified as follows:

*Direct examination*

Q. (By Mr. Mahoney) State your name, please. A. J. R. Fisher.

Q. Where is your place of business? A. 832 West 6th Avenue.

Q. What official position, if any, do you occupy in any union? A. President of Electrical Workers, Local No. 68, and also assistant business manager.

Q. And you were present on the date or times mentioned here on the Bannock Street building where certain work and services were performed? A. I was present on that job on several occasions.

Q. At that particular time, Mr. Fisher, what was the wage rate paid to your union electricians? A. \$2.05  
213 an hour.

Mr. Mahoney: That is all.

Mr. Fousek: No questions.

Mr. Mahoney: That is all.

Trial Examiner Bellman: Witness is excused.  
(Witness excused.)

Trial Examiner Bellman: Are you ready to call your next witness?

Mr. Fousek: Mr. Gould is here.

Trial Examiner Bellman: All right, put him on. This is the witness originally called by the Board?

Mr. Fousek: That is right.

Trial Examiner Bellman: All right. Being called for conclusion of cross-examination?

Mr. Fousek: That is right.

Trial Examiner Bellman: Proceed.

**Earl C. Gould**, recalled as a witness by and on behalf of the National Labor Relations Board, having been previously duly sworn, testified further as follows:

*Further cross-examination*

Q. (By Mr. Mahoney) Mr. Gould, on the Bannock Street job you were requested to give us the figures of how much the materials cost on that job; how much you paid for them?

Mr. Prisner: Off the record.

214 Trial Examiner Bellman: Off the record.

(Discussion here had off the record.)

Trial Examiner Bellman: On the record.

Q. (By Mr. Mahoney) How much was the cost of the materials to you; how much did you pay for the materials that was furnished on the Bannock Street job? A. I haven't



those figures,—Mr. Preisner prepared those figures. There was so much to do, I couldn't do it all, so John took part of it.

Q. How much did you pay out for the labor on the Bannock Street job? A. I can't answer. I can answer no questions on the Bannock Street job. Mr. Preisner has all of that information, sir.

Q. I think you were the one that was requested, were you not, to have those figures? A. I beg your pardon, sir?

Q. I say, you were the one that we requested to have those figures, is that true? A. I thought it was the partnership who the request was made upon.

Q. You were the witness. A. Just as soon as John gets back—if you will let me read his figures, I will give you—

Mr. Hornbein: We also asked you to get for us the value of the merchandise used by those three employees engaged in manufacturing in your concern.

The Witness: I cannot give that to you accurately, Mr. Hornbein.

Q. (By Mr. Hornbein) Why not? A. The whole business, the manufacturing end and the electrical end are all operated as one function.

Q. You know—. A. May I please finish, sir. —function. We keep no record of the actual number of couplings, or connectors which we may process. Some of them we sell and the majority of them, we use in our own business.

Q. All right. All right. Now, how much—what was the value of the merchandise which you sold? That was what the question was. A. We sold to the Parker Manufacturing Company—

Q. Who was that? A. Parker.

Q. Where are they located? A. 301 West Ellsworth.

Q. Denver? A. Yes, sir. \$2450.04.

Q. Worth of what? A. Of processed steel products.

Q. And when was that? A. 1946 and 1947.

216 Q. Is that combined for the two years? A. Yes, sir.

Q. Do you know how much of that was sold in 1947? A. No, sir.

Q. O. K. Go ahead. A. To Poindexter, we sold \$6,052.08.

Trial Examiner Bellman: For what period?

The Witness: 1946 and 1947.

Q. (By Mr. Hornbein) What was that merchandise? A. Steel products.

Q. Who was Poindexter? A. They are a local electrical jobbers.

Trial Examiner Bellman: What does Parker do?

The Witness: Parker processes—he makes some steel couplings and connectors and sprinklers. Now, for the Texas Company—

Q. (By Mr. Hornbein) Is that the only merchandise you sold in 1946 and 1947? A. There may be other isolated cases, but to get a record of those would just involve a lot of work and take a lot of time, so I just took those that I could remember sir. These are the major accounts.

Q. And any other merchandise you sold was just isolated cases, is that right? A. That is right.

217 Q. Not sold regularly? A. That is right.

Q. O. K. A. Now, the Texas Company, \$1024.50.

Q. What period does that cover? A. 1946 and 1947. Standard Oil for 1946 and 1947, \$3,255.72. The Continental Companies, they combined, we ran them off on tape, we didn't attempt to segregate—

Q. You mean Continental Oil and Continental Air Lines?

A. I believe yesterday, I said \$4,000 to one outfit, and \$5,000 to the other one. Actually it is \$7,467.70.

Trial Examiner Bellman: For what period?

The Witness: 1946 and 1947.

Mr. Fousek: Didn't you say \$74—

The Witness: \$7467.70.

Now, I was asked to bring the records in for the LoSasso job. All I can give you on that is the number of man hours. The reason why—

Mr. Mahoney: We object to that. We didn't ask for the number of men out there, or any reasons why, we asked for the cost both for the materials and for the labor.

The Witness: I cannot give it to you.

Mr. Mahoney: And money paid out.

The Witness: I cannot give it to you.

Mr. Mahoney: We have no further questions.

218 Q. (By Mr. Hornbein) You mean to say, Mr. Gould, you don't keep a record of your payroll as well as materials you buy for these jobs? A. I started to say that I could give the number of hours that were consumed on these three jobs.

Q. And you know how much you paid by the hour? A. But counsel, your partner, or whatever you want to call him, this nice looking gentleman here, he took objection to it, and he said I had to answer all or nothing. I cannot answer the amount of material we used, and I started to explain why. Now, if you wish, I will continue with that explanation, sir.

Q. I want to know why you can't tell us what your payroll was on those two projects when you say you know how many man hours were spent. You certainly know what the hourly rate of pay was? A. Give me time to do a little bit of multiplying.

Q. That is what we asked for yesterday. A. Can I have the time to multiply?

Trial Examiner Bellman: Yes, take the time and multiply it out. Have you finished your computation?

The Witness: No. I will assume we paid the helpers 75 cents an hour. Directly, I would say that we paid approximately \$311.47 for labor. Now, that does not take into consideration that we buy gasoline for the men with which to operate their cars. We pay for the repair and maintenance of all cars; we pay for their liability and property damage insurance. What that percent would  
219 be, I don't know.

Mr. Mahoney: The figure, \$311, how much is that per hour?

Mr. Fousek: Mr. Examiner, I think it is unnecessary. We can figure that out.



**Trial Examiner Bellman:** First you want one figure and then you want another. Will the witness tell me first how many hours you had of the different types of labor?

**The Witness:** We had 162—no, 131 hours for journeyman and helper.

**Q. (By Trial Examiner Bellman)** All right. You have that broken down into journeymen and helper, separately?

**A.** Yes, sir.

**Q.** How many hours for journeyman, at what rate per hour? **A.** 131 hours for the journeyman at 1.62½ an hour. If my multiplying adds up correctly, would amount to \$212.22.

**Q.** All right. Now, that is the basis for arriving at that figure? **A.** For the—

**Q.** The number of hours for journeyman at that cost per hour is how you get the figure for journeymen? **A.** That is correct.

**Q.** How many for apprentice? **A.** We had the same number of hours for apprentices at 75 cents per hour.

220 **Q.** And whatever that multiplies out to is the actual amount? **A.** If my multiplication is correct, \$90.25.

**Trial Examiner Bellman:** All right. The raw material, at least, is in the transcript. And anyone else who wants to multiply, including the trial examiner, can do so later.

**Q. (By Trial Examiner Bellman)** Now, do you have any way of approximating these other incidental costs that you just mentioned? **A.** Oh, I would approximate that at ten to twelve and a half percent.

**Q.** In other words, an additional ten to twelve and a half percent is the total figure? **A.** Yes, sir.

**Trial Examiner Bellman:** All right.

**Q. (By Mr. Hornbein)** What is that for, the maintenance? **A.** Yes, sir.

**Trial Examiner Bellman:** Witness mentioned gas, repairs, maintenance, liability insurance. Is there anything in addition to that you mentioned?

**The Witness:** No, sir.

Trial-Examiner Bellman: Now, do you want any other figures from this witness on this job?

Mr. Mahoney: We asked how much the materials were.

The witness: I told you I could not furnish you that, sir.

221 Trial Examiner Bellman: Now, you testified yesterday something to the effect that it was usually about half labor and half material, didn't you?

The Witness: Yes, sir.

Trial Examiner Bellman: Is there any reason to believe it was different on this job?

The Witness: Not particularly so.

Mr. Mahoney: That is all.

Trial Examiner Bellman: Any other questions of this witness? This job was which location?

The Witness: This is the LoSasso. West 45th.

Trial Examiner Bellman: This referred only to the three houses on West 45th?

The Witness: Yes, sir.

Trial Examiner Bellman: Any other questions of this witness?

Mr. Mahoney: None.

Mr. Hornbein: That is all.

Trial Examiner Bellman: Appears to be nothing further. Witness is excused.

Mr. Fousek: Thank you, sir.

(Witness excused.)

Mr. Mahoney: Mr. Preisner.

**John Preisner**, recalled as a witness by and on behalf of the National Labor Relations Board, having been  
222 previously duly sworn, testified further as follows:

*Further Cross-Examination*

Q. (By Mr. Mahoney) Now, how—

Trial Examiner Bellman: Just a minute. Let's identify this witness.

Q. (By Trial Examiner Bellman) You are Mr. Preisner?

A. Yes, sir.

Q. And you testified before? A. Yes, sir.

Q. Being recalled on these figures? A. On these figures.

Q. (By Mr. Mahoney) How much did you pay out for labor on the Bannock Street job, Bannock Street building? A. \$315.58.

Q. That is what that cost you? A. That is it.

Q. And how many hours? A. 149 hours for the journeymen, and 76 hours for the helper.

Q. How much did you pay the journeymen? A. \$1.62.

Q. And how much did you pay the helpers? A. 95 cents per hour.

Q. How much an hour did you say? A. 95 cents.

Q. Was that what you actually paid out? A. Yes, 223 sir; in this particular case, that is what this helper got. We had different helpers who are differently qualified. They get different rates of pay. As they progress in our business, they get an increase in wages.

Q. How many journeymen did you have there? A. On that job? Well, there was one journeyman that was there most of the time. He had approximately 115 odd hours. Then there was some other journeymen, but the total hours of these journeymen amounted to 149 hours and they got paid the same rate of pay.

Q. How much did the materials cost you? How much did you pay out for those materials? A. Approximately \$348.55.

Q. I want to get it definite on this one thing: The cost of those materials was the cost that you actually paid out, is that correct? A. That is correct.

Q. There is no mark-up on that, or upon the cost of the journeyman? A. No.

Mr. Mahoney: That is all.

Trial Examiner Bellman: Any other questions of the witness? Appear to be no other questions. The witness is excused.

Mr. Fousek: Thank you.

(Witness excused.)



224 Mr. Fousek: Board now rests, Mr. Examiner.

Trial Examiner Bellman: The Board has rested. The respondents may continue if the respondents are ready to do so. Do you want to continue now?

Mr. Mahoney: Go ahead, if you are ready. It is all right with me.

Mr. Williams: We are ready.

Trial Examiner Bellmann: All right. You may proceed.

Mr. Williams: Mr. Paul Johnson.

Trial Examiner Bellman: I will be glad to give you a short recess if you need it.

Mr. Williams: I don't think this will take long.

Trial Examiner Bellman: All right.

**Paul J. Johnson**, a witness called by and on behalf of the respondents, having been previously duly sworn, testified as follows:

*Direct Examination.*

Q. (By Mr. Williams) Please state your name and address. A. Paul J. Johnson; business address 1947 South Street.

Q. You are the same Paul Johnson who testified this morning? A. Yes, sir.

Q. What is your position, Mr. Johnson? A. Business representative, Carpenters Local 55, Denver.

Q. Do you recall about last November 1st, having a conversation with one of your members, Mr. John Mol-  
225 ler? A. Yes, sir.

Q. Where did that conversation take place? A. Taken place on West 45th Avenue and Tejon Street.

Q. Was there a construction job going on there? A. Yes, sir.

Q. State whether this conversation took place inside any of that construction, or the outside? A. It taken place on the—from the third house on Tejon Street on 45th.

Q. That was about what time of day? A. Between eleven and twelve o'clock in the morning.

Q. Go ahead, if you will, and tell us exactly what you said if you opened the conversation? A. Yes. I went in this house and Mr. Moller was working and I told Mr. Moller that he was working on that job with non-union men. Mr. Moller stated that he would pick his tools up and leave which he did at that time.

Q. What did you do at that time? A. I walked out of the house and Mr. LoSasso was on the outside of the house and he asked me if there was any trouble and I said no. I said the carpenter was going to leave. That is all. That was when Mr. LoSasso ordered me off the premises, and I went off.

Q. Then do you know whether John Moller had left at the time you left those premises? A. He hadn't  
226 left when I left.

Q. He hadn't left? A. No, he hadn't.

Q. Did you have any other conversation than what you have testified to with this Mr. LoSasso on that occasion?

A. That was all the conversation I had with Mr. LoSasso.

Q. Do you recall some three or four days later having another conversation with Mr. John Moller? A. Yes, sir; I do.

Q. Where did that take place? A. That taken place on West 40th Avenue.

Q. And was that also a construction job? A. Yes, sir.

Q. Where was Mr. Moller at that time? A. He was working on the inside of the house.

Q. And how did that conversation with him on that occasion begin? A. I told Mr. Moller that the job he was working on was in the same condition the one he was working on on West 45th Avenue was.

Q. What else was said at that time? A. And he said he would get his tools and get off of it. I stayed there and talked to Mr. Moller probably 15 minutes after that, approximately 15 minutes. We had quite a lengthy conversation at that time.

227 Q. What were you talking about during this 15 minutes? A. Well, we were talking about the Constitution and By-Laws of the organization, also work in general scattered over the city.

Q. You heard Mr. Moller testify this morning, Mr. Johnson? A. Yes, sir.

Q. Did you hear him mention that you said you could fine him for working out there? A. I heard that testimony and if there was a fine mentioned in that conversation, which there might have been, but I didn't threaten Mr. Moller with a fine.

Q. If any mention was made of a fine, at what point in the conversation would that have occurred, or did it occur?

A. It was probably after he said he would pick up his tools and leave. In fact, he had his tools all picked up and in the box when I left the job.

Q. Now, in these two conversations with Mr. Mooler, did you use any particular gestures in talking to him? A. Nothing in particular, no.

Q. Did you wave your arms at him? A. No, I did not.

Q. In what tone of voice did you speak? A. Ordinary tone of voice like I talk to anyone else.

Q. What sort of oath, Mr. Johnson, do members of the Carpenters Union taken when they join the union?

228 A. They take an oath, obligation to uphold the Constitution and By-Laws of that certain organization and preserve the working rules of the local union to which they belong.

Mr. Williams:- That is all.

#### *Cross-Examination.*

Q. (By Mr. Fousek) You said that something was mentioned about fines. What was said about fines in the conversation?

Mr. Hornbein: He didn't mention anything was said about signs. He said if anything was said about fines—he didn't say there was anything said about it.



Trial Examiner Bellman: I think the testimony was he said something may have been said. Reframe your question.

Q. (By Mr. Fousek) What was said, if anything, about fines? A. If there was anything mentioned about fines, as I said, it was in general conversation that was going on between Mr. Moller and I. If it was brought up, it was brought up by Mr. Moller, himself, not by me.

Q. Did you mention the fact that the Constitution forbade his working with non-union people? A. I believe Mr. Moller realizes what is in the Constitution and By-Laws of our Brotherhood.

Mr. Fousek: I move the answer be stricken as not responsive.

Trial Examiner Bellman: Answer will stand. Deny motion to strike. Read the question.

229 (Last question here read by the reporter.)

The Witness: I didn't get that.

Trial Examiner Bellman: Read the question to the witness again. I am letting your answer stand, but it isn't a very direct answer to the question. I want you to answer the question.

(Last question here read by the reporter.)

A. No, I don't believe I mentioned anything about the Constitution in telling him that it said—any part in the constitution about working with non-union men, but I do say this—did say this, rather, that the members were expected to live up to the Constitution and By-Laws.

Q. (By Mr. Fousek) Did you tell him if he continued to work there, the membership could fine him for that?

A. No, I did not.

Q. What was the first thing you said to Moller when you came onto that property? A. I told him that the job he was on was in the same condition as the one he was working on on West 45th Avenue.

Q. What did he say? A. He said, "All right. I will pick up my tools and leave."

Q. Did you have a copy of the Constitution with you?  
A. I have not.

Q. I say, did you have? A. No, I didn't. I had  
230 some in my car. I always keep them in my car.

Q. Now, you say you told him that the membership  
expected him to live up to the Constitution and By-Laws?  
A. That is right.

Q. Is that what you said? A. That is what I said, and  
then we had a general conversation. What was in it, I  
couldn't feel you.

Q. You don't remember what else was said? A. No, I  
don't.

Mr. Fousek: That is all.

Mr. Mahoney: That is all.

Mr. Williams: That is all.

Trial Examiner Bellman: Witness excused.

(Witness excused.)

Mr. Hornbein: May we have a recess for just a couple  
of minutes?

Trial Examiner Bellman: Hearing will be in recess for  
five minutes.

(Whereupon a short recess was taken.)

Trial Examiner Bellman: The hearing will be in order.

Mr. Mahoney: Off the record.

Trial Examiner Bellman: Off the record.

(Discussion here had off the record.)

Trial Examiner Bellman: On the record.

Mr. Mahoney: At this time, let the record show  
231 that the respondents are now resting.

Trial Examiner Bellman: Does the Board have  
any rebuttal it wishes to call?

Mr. Fousek: No, none.

Trial Examiner Bellman: Does the company have any  
further evidence at all?

Mr. Prisner: None.

. . . . .

254 I believe there is nothing further. No one seems to have anything else. The hearing is closed.

(Thereupon, at 4:45 p. m., Friday, April 2, 1948, the hearing in the above-entitled matter was closed.)

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**Board's Exhibit No. 2.****DOOSE & LINTNER  
CONSTRUCTION COMPANY****EXCLUSIVE BUILDERS****January 22, 1948.**

Messrs. Gould & Preisner,  
1298 South Kalamath,  
Denver, Colorado.

**GENTLEMEN:**

You will recall our initial discussions with you relative to electrical work to be performed by you as a subcontractor upon the building we are constructing at No. 1068 South Bannock Street, Denver. In our conversations it was our understanding at all times that you would be able to supply workmen for work on the building who would be able to perform their services while other workmen were engaged in construction work on the premises.

In the past, in performing subcontracts for us you have supplied both union and non-union labor and we have never had the least difficulty with regard to employment relations while your men have been on the job. As we say, it was with this understanding that we were willing to have you perform the electrical work on the Bannock Street building.

It now appears, however, that your employees are unable to perform services while the employees of other subcontractors are working on the premises. As a result of this difficulty we have been unable to continue the construction work according to plan and according to our contract with the building owner. We must ask you, therefore, as of this



date to terminate all further services for electrical work on the premises in question.

We should say further that we believe you have completed nearly all of the work which we orally agreed would be performed. Although additional electrical work will have to be done this is to be at the expense of special tenants who are planning to occupy the building when completed. Consequently, any one desiring to perform this further electrical work will have to submit bids to these tenants and will have to receive employment directly from them.

You may submit your statement for the services you have rendered in full to this date. Upon payment of your charges we will expect to receive lien waivers covering all of the work done.

Yours truly,

WM. DOOSE,  
LOUIS LINTNER,

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Board's Exhibit No. 3.

GOULD & PREISNER

Distributors of Electrical Merchandise

Denver 10, Colo.,  
January 24, 1948.

Doose and Lintner Construction Co.,  
4835 Grove Street,  
Denver, Colorado.

GENTLEMEN:

This will acknowledge receipt of your letter of January 22.

It is with a great deal of amazement and incredulity that we have read your letter and studied its contents. Our wonder is exceeded only by our disbelief that you could

seriously and in sincerity affix your signatures to a message so replete with false premises and untruths.

In order to have written us as you did, you must have closed your eyes to all of our business dealings during the course of the past few years, and, indeed, to our contractual relationship with respect to the structure known as No. 1068 Bannock Street.

The content and manner of composition of your letter indicate very clearly to us that it has been written with a view toward the protection of those certain labor organizations which, if you will recall, you so clearly denounced and were so willing to hold culpable on or about January 9, 1948, when, as you then noted, there arose, on the part of those labor organizations, renewed but futile efforts to drive us to oblivion. Each of you knows full well where to place the blame for any difficulties you may now encounter.

The better to reply with truth and sincerity, we choose to deal with your letter paragraph by paragraph.

As to the first paragraph, we deny vehemently that our initial discussions with you relative to the work to be performed by us on said building included or even vaguely referred to the facts alleged, by that paragraph, to exist. There was, as you full well know, positively no "understanding" such as you now suggest.

Referring to your second paragraph, we deny vigorously the truth of the facts alleged, in that paragraph, to exist. We shall go even further: we challenge you, or either of you, to point to any job, large or small, where Gould and Preisner, under any contract with you, or any "understanding" either directly or indirectly employed  
308 union labor to do any electrical work.

With reference to your third paragraph, we wish to stress that our workmen have not thus far missed one working day on said job. If other employees, those of other subcontractors, are remaining away from the job, you know as well as we that this is due to the fact that they have been given unequivocal orders that they shall not

dare to work on this job while Gould and Preisner's men are present. It is only, if at all, as a result of the whim of several labor organizations in this city that you now are experiencing, as you say you are, the difficulty referred to in both the second and third paragraphs of your letter.

Your fourth paragraph astonished and angered us deeply. Our statement stems from our knowledge—and yours—that there are too many witnesses to the contract which was effected between us to do electrical work on the premises. We have only barely scratched the surface of the work which we intend, pursuant to our contract, to do on said premises. Insofar as is concerned the "additional work" for the tenants, there can, indeed, be only trifles which are not already contracted for. We hold in our files correspondence and copies of correspondence concerning this "additional work", which demonstrates clearly what our contract is. You and we know exactly what our contract is and what it covers. Let us not delude each other.

With reference to the request contained in your last paragraph, you may consider our position as above indicated—and you may consider this our refusal to comply with what is obviously is the result of subterfuge. We will not furnish any lien waivers until we have completed our entire contract and have been paid for the same.

We suggest that you immediately confer with the various agents and emissaries of the labor organizations which are the sole and entire cause of any trouble you may be experiencing on said job. Perhaps they will pursue the only course which now presents itself to them—withdrawal from an ill-advised course of conduct.

We regret that we are unable to comply with your requests.

Very truly yours,

GOULD AND PREISNER,

By.....

JCP:p



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**Board's Exhibit No. 4.**  
**Constitution and By-Laws**  
**of**  
**DENVER BUILDING TRADES COUNCIL**  
**of**  
**Denver and Vicinity**  
**For Closed Shop Conditions**  
**Denver, Colorado**  
**Effective February 1st, 1936**

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• • • • •  
**BY-LAWS**

**ARTICLE I-B**

Section 1. It shall be the duty of this Council to stand for absolute *closed shop* conditions on all jobs in the City of Denver and jurisdictional surroundings. Notifications shall be given to all contractors to protect themselves in their contracts with the usual union labor clauses, so that they will be protected on materials in case of strike.

Section 2. The Board of Business Agents, by majority vote at any regular meeting, shall have the power to declare a job unfair and remove all men from the job. They shall also have the power to place the men back on the job when satisfactory arrangements have been made.

Section 3. Any craft refusing to leave a job which has been declared unfair or returning to the job before being ordered back by the Council or its Board of Agents shall be tried, and if found guilty, shall be fined the sum of \$25.00.

Section 4. Refusal of any organization to pay said fine shall be followed by expulsion from this Council. An organization so expelled shall pay said fine and one complete back quarter dues and per capita before being reinstated.

• • • • •

325

## ARTICLE XI—B

Section 1. Strikes must be called by the Council or the Board of Agents in conformity with Article I-B, Sections 1-2. When strikes are called the Council shall have full jurisdiction over the same, and any contractor, who works on a struck job, or employs non-union men to work on a struck job, shall be declared unfair and all union men shall be called off from his work or shop.

Section 2. The representative of the Council who have the power to order all strikes when instructed to do so by the Council or Board of Agents. Any member of an affiliated craft who refuses to stop work when ordered to do so by the Council or Board of Agents, shall be reported for action in the Council. All employees on a struck job shall leave the same when ordered to do so by the Council Agent and remain away from the same until such time as a settlement is made, or otherwise ordered.

429

## Board's Exhibit No. 7.

By-Laws of Local Union No. 68  
INTERNATIONAL BROTHERHOOD—  
OF ELECTRICAL WORKERS

Denver, Colorado

Approved: July 19, 1944

442

## ARTICLE XIII

## General Laws

Sec. 1. Any member violating any part of the Constitution of the IBEW—or any part of these by-laws—or any agreement of this Local Union—or the working rules—shall be dealt with by the Executive Board as stated in the Constitution and in these by-laws. Where there is no definite penalty stated, the member shall be punished in such manner as decided upon by the Executive Board.

443      Sec. 6. Any member who refuses to quit work on any job or in any shop when being notified by the Business Manager to do so shall be penalized as decided by the Executive Board.

Sec. 7. Any member failing to report a violation of any agreement or who works with a non-union workman, or who goes through any picket line without permission, shall be subject to such penalty as decided by the Executive Board.

450      **Board's Exhibit No. 8.**

Constitution and By-Laws of

**DENVER UNITY LOCAL NO. 3**  
**JOURNEYMEN PLUMBERS AND GAS FITTERS**

Founded July 1, 1877

Adopted May 15, 1940

462      **BY-LAWS**

467      **STRIKES AND LOCKOUTS**

Sec. 20. No Strike shall be considered legal unless ordered at a regular meeting after every member has been notified of the intended action, and at which two-thirds of the members present have voted in favor thereof, vote to be by secret ballot.

482      **WORKING RULES**

483      Sec. 10. No member shall work on any job with a person of our craft unless he has a clear U.A. dues book or permit.



590

**Respondent's Exhibit No. 1.**

**GOULD & PREISNER**  
**Electric Dealers - Licensed & Bonded**  
 1298 South Kalamath  
 Pearl 2431

9/25/47

**Name: Doose & Lintner**  
**Address: 1068 Bannock St.**

**PROPOSAL**

Installation of about 80 outlets for Chapman Bldg. with  
 Fluorescent fixtures 2 lt 40 for General lighting except  
 510 in Toilet & warehouse parts but no power wiring.  
 2300.00.

592

**Respondent's Exhibit No. 2.**

2704 Civil

**FILED United States District Court Denver, Colorado,**  
**March 8, 1948—G. Walter Bowman, Clerk**

**IN THE**  
**DISTRICT COURT OF THE UNITED STATES**  
**FOR THE DISTRICT OF COLORADO**

**HUGH E. SPERRY, Regional Director of the Seventeenth Re-**  
**gion of the National Labor Relations Board, for and on**  
**Behalf of the National Labor Relations Board,**  
*Petitioner,*

v.

**DENVER BUILDING AND CONSTRUCTION TRADES COUNCIL;**  
**UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF**  
**AMERICA, A.F.L., Local 55; INTERNATIONAL BROTHER-**  
**HOOD OF ELECTRICAL WORKERS OF AMERICA, A.F.L., Lo-**  
**cal, 68, AND UNITED ASSOCIATION OF JOURNEYMEN, PIPE**  
**FITTERS, AND APPRENTICES OF THE PLUMBING AND PIPE**  
**FITTING INDUSTRY OF THE UNITED STATES AND CANADA,**  
**A.F.L., Local 3, Respondents.**

**PETITION FOR AN INJUNCTION UNDER SECTION  
10(1) OF THE NATIONAL LABOR RELATIONS  
ACT, AS AMENDED**

Comes now Hugh E. Sperry, Regional Director of the Seventeenth Region, and an officer of the National Labor Relations Board (herein referred to as the Board), and petitions this Court on behalf of the Board, pursuant to Section 10(1) of the National Labor Relations Act, as amended (June 23, 1947, Public Law 101, 80th Cong., Chap. 120, 1st. Sess., herein referred to as the Act), for appropriate injunctive relief pending the final adjudication of the Board with respect to the matters pending before the Board on charges alleging that respondents have engaged in and are engaging in conduct in violation of Section 8(b) subsection 4(A), of the Act. In support thereof, your petitioner respectfully shows as follows:

1. Petitioner, Hugh E. Sperry, is Regional Director of the Seventeenth Region of the Board, an agency 593. of the United States Government, and files this petition for and on behalf of the Board.

2. Respondents, United Brotherhood of Carpenters and Joiners of America, A.F.L., Local 55; International Brotherhood of Electrical Workers of America, A.F.L., Local 68; and United Association of Journeymen, Pipe Fitters, and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, A.F.L., Local 3, unincorporated associations, are labor organizations within the meaning of Section 2(5) of the Act, and are engaged in promoting and protecting the interests of their employee members within this judicial district. Respondent, Denver Building and Construction Trades Council (herein referred to as Building Trades Council), an unincorporated association composed of the above described unions, and others, is a labor organization within the meaning of Section 2(5) of the Act, and is engaged in promoting and protecting the interests of its constituent unions and their employee members within this judicial district.

3. Jurisdiction of this proceeding is conferred upon this Court by Section 10(1) of the Act.

4. On or about January 12, 1948, Earl C. Gould and John C. Preisner, co-partners doing business as Gould & Preisner (herein referred to as Gould & Preisner), pursuant to the provisions of the Act, filed a charge with the Board, and thereafter on or about March 3, 1948, filed an amended charge alleging that respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8(b), subsection 4(A), of the Act. A copy of the amended charge is attached hereto as Exhibit 1, and made a part hereof.

5. Said charges were thereafter referred to petitioner as Regional Director of the Seventeenth Region of the Board for investigation. Petitioner has investigated said charges.

6. After such investigation, petitioner has reasonable cause to believe said charges are true and a complaint of the Board based thereon should issue against respondents. More specifically, upon information received during said investigation, petitioner has reasonable cause to believe and believes that respondents have engaged and are engaging in conduct in violation of Section 8(b), subsection 4(A), of the Act and affecting commerce within the meaning of Section 2, subsections (6) and (7) of the Act, as follows:

(a) Gould & Preisner are engaged in and about Denver, Colorado, in the business of electrical contracting and the manufacturing and retailing of electrical fittings and devices. In the operation of said business during 1947 they purchased raw materials valued in excess of \$50,000, approximately 90 percent of which materials originated at points outside the State of Colorado. During the same period the value of their finished products and services exceeded \$100,000, approximately 7 percent of which represented sales and/or services outside the State of Colorado.

(b) William I. Doose and Louis F. Lintner are co-partners doing business as Doose & Lintner Construction Com-



pany (herein referred to as Doose & Lintner), and are engaged in and around Denver, Colorado, as general building contractors.

(c) Tony LoSasso, an individual doing business as Tony LoSasso, Contractor (herein referred to as LoSasso), is engaged in and around Denver, Colorado, as a builder and general contractor of residential structures.

595 (d) On or about September 25, 1947, Gould & Preisner entered into arrangements with Doose & Lintner to perform certain electrical work, including the furnishing of materials, upon a certain commercial structure being erected at 1068 Bannock Street, Denver, Colorado. Pursuant to said arrangements Gould & Preisner began to perform said work on or about October 21, 1947. In the course of their building operations at said site Doose & Lintner have also entered into arrangements with various other independent sub-contractors to perform certain work.

(e) On or about January 8, 1948, and thereafter, respondent Building Trades Council, through its agents, advised Doose & Lintner that if they continued to use the services of Gould & Preisner on the above described job under construction, they would be picketed by the Building Trades Council on behalf of its constituent unions, some of whose members were engaged on that job.

(f) On or about January 9, 1948, and thereafter, respondent Building Trades Council picketed the Bannock Street construction site with a placard reading substantially as follows: "This job unfair to Denver Building & Construction Trades Council," because Doose & Lintner continued to use the services of Gould & Preisner and refused to submit to respondent Building Trades Council's demand that Doose & Lintner cease doing business with Gould & Preisner.

(g) On or about January 8, 1948, respondent Building Trades Council placed Doose & Lintner, and Gould & Preisner on an "unfair list" located on a blackboard at its offices at 832 West 6th Avenue, Denver, Colorado, and advised its constituent unions of that fact. Doose & Lintner

and Gould and Preisner were placed on said unfair list because Doose & Lintner continued to use the services of Gould & Preisner and refused to submit to respondent Building Trades Council's demand that Doose & Lintner cease doing business with Gould & Preisner.

(h) On or about October 23, 1947, Gould & Preisner entered into arrangements with LoSasso to perform certain electrical work, including the furnishing of materials, upon certain residential structures being erected by LoSasso at 2001, 2005 and 2015 West 45th Avenue, Denver, Colorado. Pursuant to said arrangements Gould & Preisner began to perform said work on or about November 1, 1947. In the course of his building operations at said job, LoSasso entered into arrangements with various other independent sub-contractors to perform certain work.

(i) On or about November 1, 1947, and again on or about November 7, 1947, respondents Building Trades Council and United Brotherhood of Carpenters and Joiners of America, A.F.L., Local No. 55, through their agents, induced and encouraged employee John Moller, a member of United Brotherhood of Carpenters and Joiners of America, A.F.L., and other employees, by orders, threats and/or promises of benefits, to leave the employ of LoSasso, an object thereof being to compel LoSasso to cease doing business with Gould & Preisner.

(j) On or about November 1, 1947, respondents Building Trades Council and United Association of Journeymen, Pipe Fitters and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, A.F.L., Local 3, through their agents, induced and encouraged Michael A. Capra, a member of United Association of Journeymen, Pipe Fitters and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, A.F.L., Local 3, and an employee of Louis Cook Plumbing Company, an independent sub-contractor, to leave his employment at the 45th Avenue construction site because Lo-

Sasso continued to use the services of Gould & Preisner and refused to submit to respondents' demand

that LoSasso cease to do business with Gould and Preisner.

7. Petitioner has reasonable cause to believe and believes that respondents, by the foregoing conduct, have in effect called, engaged in, and, by orders, threats and/or promises of benefits, have induced and encouraged employees of Doose & Lintner, LoSasso and employees of the various independent sub-contractors working on the Bannock Street and the 45th Avenue construction sites to engage in a strike or a concerted refusal in the course of their employment to perform services, an object thereof being to force or require Doose & Lintner, and LoSasso to cease doing business with other persons, namely, Gould & Preisner, and thereby respondents have engaged in, and are engaging in unfair labor practices in violation of Section 8(b), subsection 4(A), of the Act affecting commerce, within the meaning of Section 2(6) and (7) of the Act.

8. It may be fairly anticipated that respondents will continue, or repeat, their conduct hereinabove set forth, and engage in, and, by orders, threats and/or promises of benefits, induce and encourage employees to engage in strikes or concerted refusals in the course of their employment to perform services, objects thereof being to force or require Doose & Lintner, LoSasso and other employers or persons to cease doing business with Gould & Preisner. It is therefore essential and appropriate, just and proper, for the purpose of effectuating the policies of the Act, and in accordance with the provisions of Section 10(1) of the Act, that, pending the final adjudication of the Board with respect to these matters, respondents, and each of them, be enjoined and restrained from the commission of the acts above alleged, similar acts, or repetitions thereof.

WHEREFORE, petitioner prays:

598 1. That the Court issue a rule directing respondents to appear and show cause before this Court, at a time fixed by the Court, why an injunction should not issue enjoining and restraining respondents, and each of them,



and their agents, servants, employees, attorneys, and all persons in active concert or participation with them, pending final adjudication of the Board of such matter, from:

(a) Calling, engaging in, or inducing or encouraging the employees of Doose & Lintner, LoSasso, or of other employers or persons, by orders, threats, and/or promises of benefits, including an "unfair list," and picketing, or any other like acts or conduct, or by permitting any such to remain in existence or effect, to engage in a strike or a concerted refusal in the course of their employment to perform any services in order to force or require Doose & Lintner, LoSasso or any other employer or person to cease doing business with Gould & Preigner.

2. That upon return of the rule the Court issue an order enjoining and restraining respondents, and each of them, in the manner set forth above.

3. That the Court grant such other and further relief as may be just and proper.

Dated at Kansas City, Missouri, this 4th day of March, 1948.

HUGH E. SPERRY,

Director of the Seventeenth Region of the National Labor Relations Board.

ROBERT N. DENHAM,  
General Counsel.

DAVID P. FINDLING,  
Associate General Counsel.

WINTHROP A. JOHNS,  
Attorney.

599 WILLIAM W. KAPELL,  
Attorney.

DANIEL J. HARRINGTON,  
Attorney.

NATIONAL LABOR RELATIONS BOARD,  
516 Continental Oil Building,  
Denver, Colorado.

KANSAS CITY,  
State of Missouri, ss.

I, HUGH E. SPERRY; being first duly sworn, on oath depose and say that I am Regional Director of the Seventeenth Region of the National Labor Relations Board, that I have read the foregoing petition and exhibit and know the contents thereof, and that the statements therein made as upon personal knowledge are true and those made as upon information and belief, I believe to be true.

HUGH E. SPERRY.

Subscribed and sworn to before me this 4th day of March, 1948.

RAYMOND C. SCOTT,  
Notary Public.

My commission expires May 5, 1948.

(NOTARIAL SEAL)

600

## EXHIBIT I

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD

### AMENDED CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS

1. Pursuant to Section 10(b) of the National Labor Relations Act, the undersigned hereby charges that Denver Building and Construction Trades Council, United Brotherhood of Carpenters and Joiners of America, AFL, Local 55; International Brotherhood of Electrical Workers of America, AFL, Local 68; and United Association of Journeymen, Pipe Fitters and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL, Local 3, at Denver, Colorado, have engaged in and are engaging in unfair labor practices within the meaning of Section 8(b), subsections 4(A) of said Act, in that:

2. On or about January 8, 1948, and thereafter, said Denver Building and Construction Trades Council advised William L. Doose and Louis F. Lintner, co-partners doing business as Doose and Lintner Construction Company, that if they continued to use the services of Earl C. Gould and John C. Preisner, co-partners doing business as Gould & Preisner, on a commercial structure being erected at 1068 So. Bannock Street, Denver, Colorado, they would be picketed by said Denver Building and Construction Trades Council on behalf of its constituent unions, some of whose members were engaged on that job.

3. On or about January 9, 1948, and thereafter, said Denver Building and Construction Trades Council, through its agents, picketed said commercial structure at 1068 So. Bannock Street with a placard reading substantially as follows: "This Job Unfair to Denver Building and Construction Trades Council."

4. On or about January 8, 1948, said Denver Building and Construction Trades Council placed Doose & Lintner Construction Company and Gould & Preisner on an "Unfair List" and advised its constituent unions of that fact.

5. On or about November 1, 1947, and again on or about November 7, 1947, said Denver Building and Construction Trades Council and United Brotherhood of Carpenters and Joiners of America, AFL, Local #55, through their agents, induced and encouraged Employee John Moller, a member of United Brotherhood of Carpenters and Joiners of America, AFL, and other employees, by orders, threats and/or promises of benefits, to leave the employ of Tony LoSasso, doing business as Tony LoSasso, Contractor.

6. On or about November 1, 1947, said Denver Building and Construction Trades Council and United Association of Journeymen, Pipe Fitters and Apprentices of Plumbing and Pipe Fitting Industry of the United States and Canada, AFL, Local 3, through their agents, induced and encouraged Michael A. Capra, a member of United Associa-



tion of Journeymen, Pipe Fitters and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL, Local 3, and an employee of Louis Cook Plumbing Company, an independent sub-contractor, by orders, threats and/or promises of benefits, to leave his employment.

7. By the acts set out in paragraphs 2, 3, 4, 5 and 6 above, said Denver Building and Construction Trades Council, United Brotherhood of Carpenters and Joiners of America, AFL, Local #55, and United Association of Journeymen, Pipe Fitters and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL, Local 3, have induced and encouraged, and are inducing and encouraging employees of Doose & Lintner, Tony LoSasso and other employers or persons, by 602 orders, threats and/or promises of benefits, to engage in a concerted refusal in the course of their employment to perform services, an object thereof being to force or require said Doose & Lintner and Tony LoSasso to cease doing business with Gould & Preisner.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

3. Name of Employer: Earl C. Gould and John C. Preisner, doing business as Gould & Preisner, 1068 So. Bannock Street.

4. Location of plant involved: 2001, 2005, 2015 W. 45th Ave., Denver, Colo., Employing 30

5. Nature of business: Electrical contracting and the manufacturing and retailing of electrical fittings and devices.

6. (Paragraphs 6, 7, and 8 apply only if the charge is filed by a labor organization) The labor organization filing this charge, hereinafter called the union, has complied with Section 9(f)(A), 9 (f)(B)(1), and 9(g) of said Act as amended, as evidenced by letter of compliance issued by the Department of Labor and bearing code number —

The financial data filed with the Secretary of Labor is for the fiscal year ending —. A certificate has been filed with the National Labor Relations Board in accordance with Section 9(f)(B)(2) stating the method employed by the union in furnishing to all its members copies of the financial data required to be filed with the Secretary of Labor.

7. Each of the officers of the union has executed a non-communist affidavit as required by Section 9(h) of the Act.

8. Upon information and belief, the national or international labor organization of which this organization is an affiliate or constituent unit has also complied with Section 9(f), (g), and (h) of the Act.

603 EARL C. GOULD AND JOHN C. PREISNER, doing business as Gould & Preisner, 1298 So. Kalamath Street, Denver, Colorado, PEarl 2431.

By /s/ JOHN C. PREISNER.  
Partner.

Case No. 30-CC-2.

Date filed March 3, 1948.

9(f), (g), (h) cleared.....

Subscribed and sworn to before me this 3rd day of March, 1948, at Denver, Colorado, as true to the best of deponent's knowledge, information and belief:

/s/ HOWARD W. KLEEB,  
Board Agent or Notary Public.

(Submit original and four copies of this charge).

A true copy,

Teste:

G. WALTER BOWMAN, Clerk

By.....

Filed United States District Court, Denver, Colorado,  
Mar 19, 1948. G. Walter Bowman, Clerk.

• • • • •  
**AMENDMENT TO PETITION FOR AN INJUNCTION  
UNDER SECTION 10 (1) OF THE NATIONAL LA-  
BOR RELATIONS ACT, AS AMENDED.**

Comes now, Hugh E. Sperry, Regional Director of the Seventeenth Region, for and on behalf of the National Labor Relations Board, by his attorney, and herewith amends subsections (e), (f), and (g) of Paragraph 6 of his petition, to read as follows:

(e) On or about January 8, 1948, and thereafter, at the direction of and in concert with the International Brotherhood of Electrical Workers of America, A. F. L., Local 68, and the United Association of Journeymen, Pipe Fitters, and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, A. F. L., Local 3 and others of its constituent unions, respondent, Building Trades Council, through its agents, advised Doose & Lintner that if they continued to use the services of Gould & Preisner on the above described job under construction they would be picketed by the Building Trades Council on  
605 behalf of its constituent unions, some of whose members were engaged in that job.

(f) On or about January 9, 1948, and thereafter, at the direction of and in concert with the International Brotherhood of Electrical Workers of America, A. F. L., Local 68, and the United Association of Journeymen, Pipe Fitters, and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, A. F. L., Local 3 and others of its constituent unions, respondent, Building Trades Council picketed the Bannock Street construction site with a placard reading substantially as follows: "this job unfair to Denver Building and Construction Trades Council," because Doose & Lintner continued to use the  
services of Gould & Preisner and refused to submit to re-



spondent, Building Trades Council's demand that Doose & Lintner cease doing business with Gould & Preisner.

(g) On or about January 8, 1948, at the direction of and in concert with the International Brotherhood of Electrical Workers of America, A. F. I., Local 68, and the United Association of Journeymen, Pipe Fitters, and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, A. F. L., Local 3 and others of its constituent unions, respondent, Building Trades Council placed Doose & Lintner, and Gould & Preisner on an "unfair list" located on its blackboards at its offices at 832 West 6th Avenue, Denver, Colorado, and advised its constituent unions of that fact. Doose & Lintner and Gould & Preisner were placed on said unfair list because Doose & Lintner continued to use the services of Gould & Preisner and refused to submit to respondent, Building Trades Council's demand that Doose & Lintner cease doing business with Gould & Preisner.

Dated: March 17, 1948.

WILLIAM W. KAPPELL,  
*Attorney.*

National Labor Relations Board  
516 Continental Oil Building  
Denver, Colorado

A true copy.

Teste:

G. WALTER BOWMAN, Clerk.:

By Deputy Clerk

606

2407 Civil.

Filed United States District Court, Denver, Colorado,  
March 17, 1948. G. Walter Bowman, Clerk.

### ANSWER AND MOTION TO DISMISS

Come now the respondents by their respective attorneys, and for their answer and defense to the Petition herein state:

### FIRST DEFENSE

Respondents and each of them, move for a dismissal of the Petition filed herein on the ground that said Petition fails to state a claim against said respondents, or any of them, upon which relief can be granted, in that it is not alleged in said Petition that the unfair labor practices charged against respondents affect commerce within the meaning of Section 2(7) of the Act.

### SECOND DEFENSE

For a second and further defense herein, respondents move that the petition herein be dismissed and as grounds therefor show unto the Court:

That the relief prayed for, if granted, would deny to respondents their constitutional right of freedom of speech and freedom of assembly guaranteed to them by the First Amendment to the Constitution, and would deny to them the right of liberty and freedom of voluntary organization which they enjoy under the Fifth Amendment to the Constitution of the United States, and would enforce upon their members, involuntary servitude in violation of the Thirteenth Amendment to the Constitution of the United States.

### THIRD AND FURTHER DEFENSE

For a third and further defense herein, respondents move that the Petition be dismissed and as grounds therefor show unto the Court:

1. As the sole basis for securing the relief sought, petitioner relies upon the Labor Management Relations Act of 1947, which said Act as sought to be applied herein is unconstitutional, null, and void in that

(a) Section 8(b)(4) of the Act is repugnant to and violative of the First Amendment of the Constitution of the United States because as sought to be applied in this case, it deprives respondents and their members of the right of freedom of speech guaranteed by the First Amendment.

(b) Section 8(b)(4) of the Act as sought to be applied herein, is repugnant to and violative of the Fifth Amendment to the Constitution of the United States in that it deprives respondents of their liberty to form voluntary organizations for the purpose of bargaining as to the terms and conditions of their employment, and in that it deprives respondents of property without due process of law, said property consisting of contract rights which existed prior to and at the time of the enactment of the Act and which gave to the members of respondent unions rights of employment with contractors and sub-contractors in the City of Denver, Colorado and surrounding territory; and

(c) Section 8(b)(4) of the Act as sought to be applied herein is repugnant to and violative of the Thirteenth Amendment to the Constitution of the United States in that it compels involuntary servitude contrary to the provisions of said amendment.

608

#### FOURTH AND FURTHER DEFENSE

For answer to the Petition filed herein respondents state:

1. Admit the allegations of paragraph 1.
2. Admit the allegations of paragraph 2.
3. Deny that the Court has any jurisdiction in the premises. Respondents state that the acts and things alleged in the petition herein do not affect or burden or obstruct commerce within the meaning of Section 2(7) of the Act. Respondents state that the matters and things complained of in the Petition are matters solely in and affecting intra-state commerce over which the petitioner and this Court have no jurisdiction. Respondents further state that the dispute involved relates solely to the construction of buildings in the City and County of Denver, State of Colorado, and that the said dispute has no effect and can have no effect on commerce as defined by Section 2(7) of the Act.

4. Admit the allegations of paragraph 4.

5. As to the truth of the allegations of paragraph 5, respondents have not sufficient knowledge or information on which to form a belief.



6. Respondents deny the allegations contained in the first eight lines of paragraph 6 of the Petition, and

(a) Admit that Gould and Preisner are engaged in the electrical contracting business in and about Denver, Colorado. Respondents have not sufficient knowledge or information on which to base a belief as to the truth of the other allegations of paragraph 6(a). Respondents deny that Gould and Preisner are engaged in interstate commerce, and that their activities or operations affect interstate commerce within the meaning of Section 2(7) of the Act.

(b) Admit the allegations of paragraph 6(b).

(c) Admit the allegations of paragraph 6(c).

(d) Admit that Gould and Preisner entered into arrangements with Doose and Lintner to perform  
609 certain electrical work upon a structure being erected at 1068 Bannock Street, Denver, Colorado. Respondents admit that the said Doose and Lintner have entered into contracts with various independent sub-contractors to perform certain work in the course of operations at said site.

(e) Respondents deny the allegations of paragraph 6(e). Respondents state that the respondent Building Trades Council through its agent did advise Doose and Lintner that a picket would be placed on the Bannock street project. That the purpose of said picket was to inform the members of the constituent unions of the respondent Building Trades Council that non-union workers were being employed on the job.

(f) Respondents admit that on or about January 9, 1948, respondent Denver Building Trades Council did cause one picket to be placed on the Bannock Street construction site with a placard reading substantially "This job unfair to Denver Building and Construction Trades Council." Respondents state that the said picket was at all times peaceful and was on the public sidewalk adjoining said construction site.

Respondents further state that the purpose of said picket was to inform the members of the constituent unions of the Denver Building Trades Council that non-union men were being employed upon the job, and state that the said communication of information to the members of such unions was without threat of reprisal or force or promise of benefit and was within the guarantee of free speech of section 2(c) of the Act and of the First Amendment to the Constitution of the United States.

(g) Respondents deny that the names of Doose and Lintner were ever placed on a blackboard at its offices or on any other unfair list of respondent unions. Respondents state that the names of Gould and Preisner had for many months prior to this dispute been placed on the unfair list of respondent unions for the reason that Gould and Preisner did not observe union standards or working conditions in their business.

610 Respondents deny the other allegations of paragraph 6(g), and respondents state further that at all times mentioned herein members of respondent unions and affiliated unions were employed by and working for Doose and Lintner at various construction jobs in the City of Denver.

Respondents further allege that on or about Jan. 15, 1948, the said Gould and Preisner supplied a large group of their employees with iron pipe and other implements to be used for the purpose of threatening personal injury to members of respondent unions who were employed on the Bannock Street job. That said employees under the direction of Gould and Preisner did threaten bodily injury to members of respondent unions employed on the Bannock Street job, and said members through fear of such threats were forced to leave their jobs.

(h) Admit the allegations of paragraph 6(h).

(i) Respondents deny the allegations of paragraph 6(i) of the Petition and allege that on or about November 1, 1947 and November 7, 1947, an agent of the United Brotherhood of Carpenters and Joiners of America, A. F. L., Local

No. 55, informed an employee of LoSasso, to-wit, John Moller, a member of said union, that non-union employees were working for the said LoSasso and allege that said statement made to the said John Moller was not accompanied by any order, threat, or promise of benefit, but was communicated to the said John Moller in the exercise of the right of free speech recognized by Section 8(c) of the Act and guaranteed by the First Amendment to the Constitution of the United States. Respondents admit that the said John Moller thereafter left the employ of the said LoSasso and allege that in so doing said employee was exercising the rights recognized in section 502 of the Act and guaranteed by the Thirteenth Amendment to the Constitution of the United States.

(j) Respondents deny the allegations of paragraph 6(j) and state that if the said Capra did leave his employment he did it voluntarily without any threat of reprisal or force or promise of benefit, and that he was acting within his rights guaranteed by section 502 of the Act, and the Thirteenth Amendment to the Constitution of the United States.

7. Respondents deny the allegations of paragraph 7, and further state that if any of the employees have refrained from the performance of services as alleged in paragraph 7 that such employees have done so voluntarily, without any threat of reprisal or force, or promise of benefit, and were acting within the scope of the guarantee against involuntary servitude of section 502 of the Act and of the Thirteenth Amendment to the Constitution of the United States.

8. Respondents incorporate in their answer to paragraph 8 of the petition the denials heretofore made as to the allegations of the preceding paragraphs. Respondents deny that they have engaged in any unfair labor practices as alleged in paragraph 8, and respondents deny that they are presently engaging in said acts, or that they have any intention of engaging in such acts in the future. Respondents state that their conduct has been at all times lawful and



has been confined to the exercise of their constitutional right of freedom of speech guaranteed by the First Amendment to the Constitution of the United States, freedom of voluntary organization guaranteed in the Fifth Amendment to said Constitution, and freedom from involuntary servitude guaranteed in the Thirteenth Amendment to said Constitution.

9. Respondents state that the construction jobs heretofore mentioned have either been completed or are in the process of being completed without any disruption or cessation of work, or threat of disruption; that there is no obstruction to the flow of interstate commerce, nor threat of obstruction to the flow of interstate commerce, nor any dispute leading or tending to lead to a burdening or obstructing of commerce or the free flow of commerce, that respondents are not committing and do not threaten to commit or contemplate committing any unfair labor practice within the meaning of the Act; and, that, therefore, this is not a proper case for an injunction or temporary restraining order.

612 10. Respondents deny each and every allegation not herein specifically admitted.

WHEREFORE, respondents and each thereof, pray for a dismissal of said petition, and for judgment herein, and

for their costs herein expended, and for such other, further and different relief as to the Court may seem proper.

**PHILIP HORNBEIN,**  
**PHILIP HORNBEIN, JR.,**

**Attorneys for Respondents Denver  
 Building and Construction Trades  
 Council; International Brother-  
 hood of Electrical Workers of  
 America, A. F. L., Local 68, and  
 United Association of Journeymen  
 Pipe Fitters, and Apprentices of  
 the Plumbing and Pipe Fitting In-  
 dustry of the United States and  
 Canada, A. F. L. Local 3.**  
**620 Symes Building, Denver, Col.**

**WAYNE C. WILLIAMS,**  
**WAYNE D. WILLIAMS,**

**Attorneys for Respondent United  
 Brotherhood of Carpenters and  
 Joiners of America, A. F. L., Local  
 55.**  
**926 First National Bank Bldg.,  
 Denver, Colorado.**

**Address of Respondents:**  
**832 West 6th Avenue**  
**Denver, Colorado.**

• • • • •

613

2407 Civil

FILED United States District Court, Denver, Colorado,  
March 31, 1948. J.G. Walter Bowman, Clerk.

**FINDINGS OF FACT, CONCLUSIONS  
OF LAW, ORDER AND JUDGMENT**

This cause coming on to be heard on the verified petition of Hugh E. Sperry, Regional Director of the Seventeenth Region of the National Labor Relations Board, on behalf of said Board for temporary injunction, and upon the issuance of a rule to show cause returnable this 29th day of March, 1948, and upon respondents' motion to dismiss, and the Court having heard the evidence and the arguments of counsel, and being fully advised does make the following Findings of Fact and Conclusions of Law:

**FINDINGS OF FACT**

1. The respondents, and each of them, are unincorporated associations and are labor organizations within the meaning of the Labor Management Relations Act of 1947, hereinafter referred to as said Act.

614 2. Gould and Preisner is a partnership engaged in the electrical contracting business in the City of Denver, State of Colorado, and in addition is engaged in the processing and manufacturing of certain electrical and other products. They have a warehouse in Denver, Colorado, and purchase a considerable part of the materials used in their business from sources outside of this State. These materials are then placed in this warehouse and are removed from it as needed for particular construction jobs. During 1947 this firm purchased such materials from forty firms outside of Colorado, said materials having a gross value of \$55,745.25. In addition, Gould and Preisner sold approximately \$5,000 worth of said materials to persons outside of Colorado, which materials Gould and Preisner had processed.



3. For sometime prior to the commencement of this action the firm of Gould and Preisner had been listed on an "unfair list" on a blackboard at the meeting hall of the respondent Denver Building Trades Council.

4. The firm of Doose and Lintner is a partnership engaged in the general contracting business in the City of Denver, State of Colorado. The said firm at all times mentioned herein was engaged in the construction of a certain building project at 1068 Bannock Street, Denver, Colorado. It had contracted with the said Gould and Preisner to do the electrical installation work on said project, and pursuant to said contract employees of Gould and Preisner were engaged in the installation of electrical wiring and fixtures on said project. Respondent Denver Building Trades Council caused one of its members to picket said premises, carrying a sign stating "This job unfair to Denver Building and Construction Trades Council". All the employee members of the various unions working on this job thereupon ceased working and did not return to work at this job until the picket was removed approximately two and one-half weeks thereafter. The remaining construction jobs herein  
 615 involved were for construction of private residences, the general contractor for which was one LoSasso, who arranged for Gould and Preisner to perform the electrical work required therefor. As to these jobs, no picketing was done. On one occasion an officer of the respondent United Brotherhood of Carpenters and Joiners of America, A.F.L., Local 55, called a member of the Carpenters Union off of one of the LoSasso houses in connection with this dispute. All of the construction jobs were acts in connection with this dispute occurred were located in Denver, Colorado, and the electrical material used by Gould and Preisner on said jobs was not ordered specially therefor or received direct from any supplier located outside of Colorado, but was taken from their stock of merchandise in their warehouse, which material and merchandise had been imported from outside the state.

5. Some of the construction jobs involved were for private residences, all of which structures have been completed. As to the one remaining construction job involved, all work contracted for to Gould and Preisner has now been completed; no picketing had been done in connection with this dispute for approximately six weeks prior to the filing of the petition herein, nor has there been any work stoppage during said time.

As to the remaining construction job here involved, to wit, the Bannock Street project, the services of Gould and Preisner were terminated by Doose and Lintner before the completion thereof pursuant to their contract.

#### CONCLUSIONS OF LAW

1. The Court has jurisdiction of the parties and of the cause of action.

2. The construction of the houses and other buildings in the City of Denver involved in this action constitutes  
616 a purely local project and intrastate in character and does not affect interstate commerce, is not subject to the provisions of said Act; that in this case the Regional Director had no reasonable cause to believe that the charges made with him in this case affect commerce.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED: That the petition herein be dismissed.

Done and signed in open court this 3d day of March, A. D. 1948.

671

## UNITED STATES OF AMERICA

## BEFORE

## THE NATIONAL LABOR RELATIONS BOARD

## DIVISION OF TRIAL EXAMINERS

## WASHINGTON, D. C.

Case No. 30-CC-2

In the Matter of

DENVER BUILDING AND CONSTRUCTION TRADES COUNCIL;  
UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF  
AMERICA, A. F. L., LOCAL 55; INTERNATIONAL BROTHER-  
HOOD OF ELECTRICAL WORKERS OF AMERICA, A. F. L.,  
LOCAL 68; AND UNITED ASSOCIATION OF JOURNEYMEN AND  
APPRENTICES OF THE PLUMBING AND PIPE FITTING IN-  
DUSTRY OF THE UNITED STATES AND CANADA, A. F. L.,  
LOCAL 3,<sup>1</sup>

and

EARL C. GOULD and JOHN C. PREISNER, doing business as  
GOULD & PREISNER

*Messrs. Robert S. Fousek and James K. Sullivan, for the  
General Counsel.*

*Hornbein and Hornbein, by Mr. Philip Hornbein, Jr., of  
Denver, Colo., for Denver Building and Construction  
Trades Council, and for United Association of Jour-  
neymen and Apprentices of the Plumbing and Pipe  
Fitting Industry of the United States and Canada,  
A. F. L., Local 3.*

*Messrs. Wayne C. Williams and Wayne D. Williams, of  
Denver, Colo., for United Brotherhood of Carpenters  
and Joiners of America, A. F. L., Local 55.*

<sup>1</sup> The caption has been amended as to the name of the last organization by striking out two words and the commas which set them off, namely, PIPE FITTERS, which erroneously appeared after JOURNEYMEN; this conforms the name to that appearing in the constitution of the parent organization.



*Mr. Charles T. Mahoney*, of Denver, Colo., for International Brotherhood of Electrical Workers of America, A. F. L., Local 68.

*Mr. Stanley W. Preisner*, of Denver, Colo., for Gould & Preisner.

### **Intermediate Report.**

#### **Statement of the Case**

Upon an amended charge filed on March 3, 1948, by Earl C. Gould and John C. Preisner, doing business as Gould & Preisner, the General Counsel of the National Labor Relations Board,<sup>2</sup> by the Regional Director for the Seventeenth Region (Kansas City, Missouri), issued a complaint dated March 12, 1948, against Denver Building and Construction Trades Council, herein called the Council; United Brotherhood of Carpenters and Joiners of America, A. F. L., Local 55, herein called Carpenters; International Brotherhood of Electrical Workers of America, A. F. L., Local 68, herein called IBEW; and United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, A. F. L., Local 3, herein called Plumbers, alleging that the Respondents,<sup>3</sup> and each of them, had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (b) (4) (A) and Section 2 (6) and (7) of the National Labor Management Relations Act, 1947, 61 Stat. 136, herein called the Act. Copies of the complaint and notice of hearing thereon were duly served upon the Respondents and Gould & Preisner.

With respect to the unfair labor practices, the gist of the complaint was that the Respondents, jointly and severally and in violation of Section 8 (b) (4) (A) of the Act, engaged in activities to enforce demands that two Denver, Colorado,

<sup>2</sup> The General Counsel and his representatives in this case are referred to as the General Counsel; the National Labor Relations Board, as the Board.

<sup>3</sup> This term is used without adjective limitation only when reference is made to all four of the Respondents.

building contractors, Doose & Lintner Construction Company, herein called Doose & Lintner, and Tony LoSasso, herein called LoSasso, each of which had subcontracted with Gould & Preisner for certain electrical work, cease doing business with Gould & Preisner. As to the particular activities, the complaint alleged, in essence: (1) that about November 1 and also about November 7, 1947, the Council and Carpenters, through their officers and agents, induced and encouraged John Moller, a member of United Brotherhood of Carpenters, and "other employees," by "orders, threats and/or promises of benefits" to leave the employ of LoSasso; (2) that about November 1, 1947, the Council and Plumbers, through their officers and agents, by "threats of force or reprisal and/or promises of benefits," induced and encouraged Michael Capra, a member of Plumbers and an employee of Lewis Cook Plumbing Company, herein called Cook, an independent subcontractor performing services for LoSasso, to leave his employment on a LoSasso project; (3) that about January 8, 1948, and thereafter, the Council, IBEW, and Plumbers, through their officers and agents, advised Doose & Lintner that a building they were constructing at 1068 Bannock Street in Denver would be picketed if they continued to utilize the services of Gould & Preisner; (4) that about January 8, 1948, because Doose & Lintner continued to use Gould & Preisner's services, the Council placed both Doose & Lintner and Gould & Preisner on an "unfair list" on a blackboard in the Council's Denver office and so advised its constituent unions; and (5) that about January 9, 1948, and thereafter, the Council picketed the Bannock Street construction site of Doose & Lintner with a placard reading, "This Job Unfair to Denver Building and Construction Trades Council."

On March 19, 1948, the Regional Director, upon a joint motion filed by the Respondents, extended the time for filing an answer to April 1, 1948. On March 23, 1948, the Regional Director granted in part and denied in part a motion

for a bill of particulars filed jointly by the Respondents, duly serving said particulars on the parties.

On April 1, 1948, the Respondents filed a joint answer and motion to dismiss, setting up several special defenses, admitting in part and denying in part the allegations of the complaint, and denying that the Respondents had engaged in any unfair labor practices. The answer admitted that the Council had placed one picket with a placard reading as alleged at Doose & Lintner's Bannock Street site and that an agent of Carpenters had twice informed Moller that non-union employees were working for LoSasso. The answer alleged, however, that said acts were informative and non-coercive communications which were protected by Section 8 (c) of the Act and by the First Amendment of the Constitution of the United States. Other defenses raised by the Respondents' answer and motion to dismiss were that the activities alleged to be unfair labor practices do not affect commerce within the meaning of the Act; that said activities are protected by the First, Fifth, and Thirteenth Amendments to the Constitution; and that the decision of the United States District Court for the District of Colorado in Civil Action No. 2407,\* "constitutes a bar to this proceeding under the principal of *res judicata*."

Pursuant to notice, a hearing was held on April 1 and 2, 1948, at Denver, Colorado, before Earl S. Bellman, the undersigned Trial Examiner, duly designated by the Chief Trial Examiner. The General Counsel, the Respondents, and Gould & Preisner were represented by counsel and participated in the hearing. Full opportunity to be heard, to

\* The various papers filed herein by the Respondents, from the above motions to the briefs discussed below, have all been filed by the Respondents jointly, each document bearing five signatures: Philip Hornbein and Philip Hornbein, Jr., for the Council and Plumbers; Wayne C. Williams and Wayne D. Williams for Carpenters; and Charles T. Mahoney for IBEW. However, only Philip Hornbein, Jr., Wayne D. Williams, and Charles T. Mahoney appeared at the hearing.

\* *Sperry v. Denver Building and Construction Trades Council, et al.*, 21 LRRM 2712 (March 30, 1948); 21 LRRM 2572 (March 31, 1948).



examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties.

At the opening of the hearing, the Respondents asked for a ruling on one of the grounds of their motion to dismiss, namely, that the doctrine of *res judicata* deprived the Board of jurisdiction to proceed. Ruling was reserved as to dismissal on other grounds, and oral argument was heard on the contention that the District court's decision barred further proceedings.\* Thereafter the undersigned denied, without prejudice to its renewal, the motion to dismiss on the aforesaid ground, and the hearing proceeded.

At the close of the hearing, the Respondents renewed their motion to dismiss on all grounds set out in their answer; ruling was reserved thereon. For reasons which appear hereinafter, the Respondents' motion to dismiss, insofar as it is inconsistent with the recommendations made below, is hereby denied. The parties were afforded an opportunity to argue orally before the undersigned and to file briefs and/or proposed findings of fact and conclusions of law. The three attorneys appearing at the hearing for the Respondents argued orally on the record. After the hearing pursuant to extension by the Chief Trial Examiner of time for filing to May 5, 1948, the Board filed a brief and the Respondents filed a joint brief and joint proposed findings and conclusions.<sup>†</sup>

\* In brief, the District court, in dismissing a petition (filed pursuant to Section 10 (1) of the Act) for "appropriate injunctive relief pending the final adjudication of the Board," held, among other things, that the construction activities involved were "purely local," and did not "affect interstate commerce," and were "not subject to the provisions" of the Act.

<sup>†</sup> The undersigned's rulings on the proposed findings and conclusions are set out below.

## Findings of Fact

## I. The business of Gould &amp; Preisner; question concerning jurisdiction.

Gould & Preisner, the charging party herein,\* is a partnership composed of Earl C. Gould and John C. 674 Preisner, who for some 20 years have been electrical contractors in Denver, Colorado. Gould & Preisner perform electrical work on new residential, commercial, and industrial construction and engage in all branches of electrical repair and maintenance work, except repair of electrical appliances. They presently have 28 employees, of whom 13 are licensed electricians, 10 are apprentices, and 5 are stockmen and armature winders. Their office, warehouse, repair and fabrication activities occupy three buildings in Denver, a two-story main building, 45 by 80 feet, and two one-story structure, approximately 24 by 45 feet and 60 by 100 feet, respectively.

The materials which Gould & Preisner purchase for use in their business include copper wire, electric metallic tubing, conduits, steel boxes, panels, switches, and plugs. During 1947, Gould & Preisner purchased \$86,560.30 worth of raw materials, of which \$55,745.25 was purchased from more than 40 firms outside of the State of Colorado. Thus approximately 65 percent \* of their materials were received directly from sources outside of Colorado. In addition, with the possible exception of some nails, the merchandise locally was produced outside of Colorado.

Gould & Preisner render no services outside the State of Colorado. However, they do various types of electrical work for several firms, some of which have their main

\* From the Intermediate Reports involving Section 8 (b) (4) (A) of the Act which have been issued by other Trial Examiners, it appears that the commerce facts relied upon by the General Counsel to establish jurisdiction pertain to charging parties. In some cases, as in the instant matter, the charging party was the enterprise involved in the primary dispute; in other cases, the enterprise against which secondary action was directed; and in one case, where a joint charge was filed, both enterprises.

\* Upon the basis of the actual figures, the percentage appears to be 64.4 percent, rather than the 70 percent approximation which appears in the record.

offices outside Colorado. For instance, during the 2-year period, 1946 and 1947, the total amount which Gould & Preisner received for such work from the Texas Company was \$1,024.50; from Standard Oil was \$3,255.72; and from Continental Oil Company and from Continental Air Lines, jointly, was \$7,467.70.<sup>10</sup>

As a part of their integrated operations, Gould & Preisner manufacture water sprinklers and steel tube couplings and connectors. The value of the materials used in manufacturing operations is not available; it appears that most of the couplings and connectors are used by Gould & Preisner in their own business. The number of employees engaged in manufacturing, which is seasonal in nature, fluctuates from none to three. On direct examination, Earl C. Gould testified that in 1947 the value of products shipped outside of the State was equal to about 5 percent of total annual purchases, which amount to approximately \$86,000. However, when asked to produce figures to support his estimates as to the out-of-State sales of manufactured products, Gould testified, upon resuming the stand after consulting business records, that while there might be "other isolated cases," the "major accounts" involving manufactured products were a local manufacturer and a local electrical jobber, and that during 2 years, 1946 and 1947 combined, Gould & Preisner sold to them, respectively, \$2,450.04 and \$6,052.08 worth of manufactured products. In the undersigned's opinion, the evidence in the record herein does not establish the extent of Gould & Preisner's out-of-State sales, if any.<sup>11</sup>

675 Two construction projects upon which Gould & Preisner performed electrical work are directly in-

<sup>10</sup> The record does not contain details as to the operations of these companies.

<sup>11</sup> The District Court found that Gould & Preisner sold \$5,000 worth of processed materials outside of Colorado. The General Counsel's brief places the amount of such sales at \$4,300. While witnesses who testified before the undersigned also testified in the court case, the record in that case is not a part of the record herein; the undersigned does not know what evidence was before the court. Presumably the figure appearing in the General Counsel's brief is based on Gould's direct examination, 5 percent of \$86,000.



volved in the instant matter. The LoSasso project, upon which Gould & Preisner completed their electrical work, consisted of three houses on 45th Avenue in Denver. It involved a total expenditure by Gould & Preisner of approximately \$350 for labor and about the same amount for materials. The Doose & Lintner project, a two-story commercial structure called the Chapman Building, 1068 Bannock Street, Denver, involved an expenditure by Gould & Preisner, up to the time their services were terminated in January 1948 under circumstances considered below, of approximately \$315.58 for labor and \$348.55 for materials.<sup>12</sup>

The Respondents contend that the instant matter does not involve commerce within the meaning of the Act and that the decision of the District court so holding is *res judicata* in this proceeding. The court's decision was upon a petition filed with it, pursuant to Section 10 (1) of the Act, asking "appropriate injunctive relief pending the final adjudication of the Board with respect to the matters pending before the Board on charges." That proceeding was not initiated to determine the merits of the case. In contrast, the hearing held before the undersigned was upon the merits. It initiated the process which leads, upon the basis of the record made in said hearing, to final adjudication by the Board, subject to appeal to the appropriate United States Circuit Court of Appeals. Clearly, the District court, in one of two separate types of concurrent actions provided for in Section 10 of the Act, refused to exercise powers conferred upon it to grant injunctive relief pending final adjudication. However, its action was not a step in that adjudication. Thus, while the District court refused to grant injunctive relief because, among other things, it did not interpret the evidence before it as estab-

<sup>12</sup> In view of the conflicting evidence thereon, the undersigned makes no finding as to how much electrical work was contracted for between Doose & Lintner and Gould & Preisner, or how much remained to be completed when the latter's services were terminated. However, there is no contention that the total price to Doose & Lintner for work which Gould & Preisner proposed to perform on the Chapman Building was greater than a \$2,300 estimate which Earl Gould made on an unsigned "PROPOSAL" dated September 25, 1947.

lishing any effect upon commerce within the meaning of the Act, such refusal did not constitute final adjudication of the issues presented for decision here. Hence, in the undersigned's view, the District court's opinion, which has been duly considered, is not *res judicata* on the question of commerce or upon any other aspect of the instant matter.

Viewed solely in terms of the commerce facts shown in relation to the two projects involved herein, it is apparent that the value of the *materials used and intended to be used* by Gould & Preisner on the LoSasso and on the Doose & Lintner projects was not large, probably not more than \$1,500 at the most.<sup>13</sup> Assuming, in the absence of contrary evidence, the general ratio of approximately 65 percent of products from outside Colorado, it appears that the value of the out-of-State materials used and intended to be  
676 used on the two projects was \$1,000 or less.<sup>14</sup> How-

ever, neither the potential nor the ultimate effect upon commerce of unfair labor practices such as those alleged herein can be measured in terms of the above figures, since any widespread application of such practices might well result in substantially decreasing the inflow of materials to them from points outside of Colorado. Gould & Preisner's annual inflow of over \$55,000 worth of materials is not negligible. Such an inflow is sufficient to establish the Board's jurisdiction.<sup>15</sup> Accordingly, the undersigned finds that Gould & Preisner are engaged in commerce within the meaning of the Act.<sup>16</sup>

<sup>13</sup> This figure is based on the assumption that approximately 50 percent of the estimated \$2,300 for electrical work proposed by Gould & Preisner for Doose & Lintner's Bannock Street building might ultimately have gone into materials if all of the work had been completed. The actual expenditure for materials used was about \$700 on both projects.

<sup>14</sup> Out-of-State materials actually used apparently did not exceed \$500 in value.

<sup>15</sup> See cases cited by the Board to this effect in *Matter of Liddon White Truck Co., Inc.*, 76 N. L. R. B., No. 165.

<sup>16</sup> It would appear from the Board's decision in the *Liddon White* case, especially in view of the special consideration pertaining to the building and construction industry discussed in the dissenting opinion therein, that the Board will assert jurisdiction in the instant matter. Cf. *Matter of Home-Ord Food Stores, Inc.*, 77 N. L. R. B., No. 101; and *Matter of Duke Power Company*, 77 N. L. R. B., No. 103.

## II. The labor organization involved.

Denver Building and Construction Trades Council is a labor organization composed of delegates allotted on the basis of membership, who represent the various local labor unions whose members are engaged in building and construction work in Denver, Colorado, and vicinity. The Council has its own officers and its own constitution and by-laws and is engaged in protecting the interests of its constituent unions and their members. Among the several unions which have thus affiliated to form the Council are the three craft unions involved herein, Carpenters, IBEW, and Plumbers.

United Brotherhood of Carpenters and Joiners of America, A. F. L., Local 55; International Brotherhood of Electrical Workers of America, A. F. L., Local 68; and United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, A. F. L., Local 3, respectively, are local labor organizations which admit to membership craftsmen in Denver and vicinity whose work falls within their respective craft jurisdictions. Carpenters, IBEW, and Plumbers are locals of their respective parent craft organizations which are affiliated with the American Federation of Labor.<sup>17</sup>

## III. The unfair labor practices<sup>18</sup>

### A. Background.

Gould & Preisner's employees have not been unionized. For some 10 or 15 years, the firm's name has been written in chalk on an "Unfair List" maintained on a blackboard

<sup>17</sup> In each case, the name of the parent organization appears as part of the full name of Carpenters, IBEW, and Plumbers as shown above. From its constitution, it appears that Plumbers is also known as "Denver Unity Local No. 3 of Journeymen, Plumbers and Gas Fitters."

<sup>18</sup> Unless otherwise indicated, the findings in this division of the report are made upon documentary evidence or upon credited testimony which is either undisputed or is at variance only as to immaterial details. It should be noted that most of the witnesses herein were called by the General Counsel, that some of those witnesses testified with reluctance, and that their testimony contains inconsistencies and contradictions.



in the Council's office in Denver. Gould & Preisner's  
 677 name has worn off or been rubbed off from time to  
 time, but it has been rewritten on the blackboard.  
 Also the firm's name and the names of several businesses  
 listed as unfair have been circulated to the Council's con-  
 stituent unions when such names have been recorded in the  
 minutes of meetings held by the Council. Gould & Preisner  
 presently pay their journeymen electricians \$1.62½ an  
 hour; the union scale in Denver is \$2.05. It is clear that the  
 events discussed below form but a phase of a long standing  
 situation involving Gould & Preisner, on the one hand, and  
 the Council and its various affiliates, particularly the  
 IBEW, on the other.

#### *B. Events pertaining to LoSasso.*

Tony LoSasso, an individual doing business as Tony Lo-  
 Sasso, herein called LoSasso, has been engaged for about  
 3 years in the construction of residential buildings, prin-  
 cipally in north Denver. Jerry LoSasso, the son of Tony  
 LoSasso, is associated with his father in construction op-  
 erations.<sup>19</sup> It is their practice in constructing houses to hire  
 directly only carpenters and to subcontract all other work,  
 such as excavating, plumbing, plastering, masonry and  
 brick work, and electrical work. While there is some con-  
 fusion in the record as to dates and the precise chronology  
 of events, it is clear that the developments now to be con-  
 sidered, all of which transpired during the fall of 1947,  
 related to two projects being constructed by LoSasso. One  
 was a single house at 1725 W. 40th Avenue, herein referred  
 to as the 40th Avenue project, upon which union electricians  
 were being employed and upon which Gould & Preisner's  
 services were not used. The other project, consisting of  
 three houses at 2001, 2005, and 2015 W. 45th Avenue, herein  
 called the 45th Avenue project, did involve Gould & Preis-  
 ner's services for all of the electrical work from the prelim-

<sup>19</sup> Jerry LoSasso, the principal witness called by the General Council con-  
 cerning the LoSasso projects, impressed the undersigned as a credible witness.

inary wiring to the hanging of fixtures. This work was performed by two employees of Gould & Preisner and was completed early in 1948. We turn now to a consideration of the events pertaining to these LoSasso projects.

About the first of September, 1947, Jerry LoSasso had a conversation near the 45th Avenue project with J. R. Fisher,<sup>20</sup> president and also assistant business manager of IBEW. Fisher stated that he had read in the "Daily Record" of the building permits which had been issued for that project and suggested that LoSasso use union electricians on it. LoSasso said that he would and asked Fisher to send someone to give him a bid for the electrical work.

About the first of October, after LoSasso had retained the services of Gould & Preisner for the electrical work,<sup>21</sup> Fisher again saw LoSasso at the 45th Avenue project and told LoSasso that he was "very unhappy" about his "using non-union electricians." Fisher also told LoSasso that he should have got in touch with him before hiring non-union electricians and asked what had happened to the men that he had sent to LoSasso. LoSasso explained that one of them had stated that he did not want to work in that vicinity. LoSasso told Fisher that it would save a lot of trouble if IBEW would sign up Gould & Preisner. Fisher said that he was willing but that Mr. Gould and Mr. Preisner  
678 were not willing to sign up and that he wanted "to get as much business away from their firm as possible."

Sometime about November 1, but prior to conversations discussed hereinafter,<sup>22</sup> Fisher, accompanied by three other

<sup>20</sup> Also referred to in the record as Jack Fisher and John Fisher.

<sup>21</sup> Evidently the services of Gould & Preisner had been retained by that time; although there is conflict as to when electrical work actually started on the 45th Avenue project. Jerry LoSasso testified that he thought that the date was about September 20; Earl Gould fixed the date as about November 1. While some preliminary work may have been performed as early as September 20, the undersigned believes that November 1 was the approximate date, everything considered, upon which electrical work got into full swing.

<sup>22</sup> The testimony as to several conversations places them all about November 1. The undersigned is satisfied, however, from his analysis of the testimony, that the conversations occurred in the sequence in which they are set forth.

men, called on Jerry LoSasso at the 40th Avenue house. Fisher introduced LoSasso to Clifford Goold, business representative and secretary-treasurer of the Council, and to Clyde Williams, business manager of IBEW,<sup>23</sup> and said that they were there to talk with him about "using all union labor." Goold, who had learned that there were non-union plasterers on the 40th Avenue house, criticized the way the plaster had been put on the walls. However, Goold indicated that they were not interested in that house, but rather in further work on the 45th Avenue project where they wanted only union labor used. Mentioned specifically as non-union help on the 45th Avenue project were Gould & Preisner's electricians and a non-union "cement man." The union representatives did not state what action might be taken, but indicated a willingness to get together with LoSasso to "make proper arrangements so there would be no trouble."

It is clear that after the above conversation Gould & Preisner's two non-union electricians remained on the 45th Avenue project, whatever may have happened with respect to the non-union cement man. While that condition prevailed, two union men employed on the 45th Avenue project left the project on the same day, about the first of November.<sup>24</sup> Michael Capra, a union plumber, who worked for Lewis Cook Plumbing Company, a subcontractor doing work for LoSasso, was one who left. The other was John Moller, a union carpenter, who has a work permit from Carpenters,<sup>25</sup> and who has been working for LoSasso since coming to Denver some years ago.

Shortly before noon on the day on which Moller left the 45th Avenue job, Paul Johnson, business representative of Carpenters, went into the house on that project in which

<sup>23</sup> LoSasso could not identify the fourth union representative but believed that the union he represented was the "drain layers."

<sup>24</sup> It is not clear whether there were any other union men then working on the 45th Avenue houses. In any event, the evidence does not show that "other employees" also left the project.

<sup>25</sup> Moller is a member of Local 750, Junction City, Kansas, United Brotherhood of Carpenters.



Moller was then at work and informed him that he "would have to come off the job until they got it straightened up, pulled me off."<sup>26</sup> Moller stated that he would pick up his tools and leave; he started to do so before Johnson left the house.

After having seen Miller, Johnson met Jerry LoSasso on the sidewalk and told him, among other things, that he was "pulling the carpenter from the job" on his "own authority" because there were non-union men working on the project.<sup>27</sup>

679 LoSasso then saw Moller behind the house, while Moller was preparing to leave, and asked him why he was leaving. Moller replied that he was "leaving so that he would not be in jeopardy with the union." LoSasso told Moller that he could stay on if he wanted to do so, but Moller stated that he did not "want to cause any trouble with the local." Shortly thereafter Moller left the job.<sup>28</sup>

As to why the plumber, Capra, left the 45th Avenue job the same day as Moller, the record provides only the testimony of Capra, a reluctant and evasive witness called by the General Counsel. In substance, Capra's testimony was that his employer, Cook, had taken him off the LoSasso job for "a couple of weeks" because his services were urgently needed elsewhere on "an emergency job," and that while he had heard "rumors" that the "LoSasso job had been pulled," he had no knowledge to that effect either from his

<sup>26</sup> The undersigned credits the version of Moller, a witness called by the General Counsel, as to the substance and import of Johnson's remarks. Johnson, when called by the Respondents, testified that he told Moller that he "was working on that job with non-union men." The undersigned is satisfied that Johnson's remarks were not merely informative but were, as Moller clearly understood them, instructions that he leave the job.

<sup>27</sup> The above finding is made on credited testimony of LoSasso. The undersigned does not accept Johnson's version to the effect that he told LoSasso that "the carpenter was going to leave." It is noteworthy that there is no contention that LoSasso was employing non-union carpenters on the project.

<sup>28</sup> The quoted material in the above paragraph is from credited testimony of LoSasso. The undersigned does not consider Moller's testimony that he did not tell LoSasso of his talk with Johnson inconsistent with the above findings, especially since Moller admitted having a conversation with LoSasso after putting his tools in his car.

employer or from the business representative of his union."

There is ambiguity and conflict in the evidence as to the course of events concerning LoSasso after the foregoing had taken place on approximately November 1. It is apparent, however, that about 2 days after Moller left the 45th Avenue project, he resumed work for LoSasso on the 40th Avenue house.<sup>29</sup> Shortly thereafter, approximately November 7; several employees on the 40th Avenue house, including the union electricians, a tile setter who was a subcontractor, and Moller, left that job. Detailed evidence was adduced only as to the circumstances pertaining to Moller's leaving the 40th Avenue project.

Moller testified on direct examination that the day after he started to work at the 40th Avenue house, Johnson came to him in the house; told him that he would have to leave the job; and said, "I could fine you for this." On cross-examination, Moller admitted that he had testified in the District court that he did not know just what had been said on the occasion of his second conversation with Johnson and that that was still true.

According to Johnson, he told Moller that "the job he was working on was in the same condition" as the one on 45th Avenue; Moller then said that "he would get his tools and get off of it." Johnson denied threatening Moller with any fine; he testified that if the subject of fines was mentioned during their 15-minute conversation, it was Moller who had brought it up. Johnson admitted that he told Moller that Carpenters' membership expected him to live up to the constitution and by-laws. Johnson also testified that members of Carpenters were obligated by their oath to up-

<sup>29</sup> It should be noted that the opinion of the District court contains the following:

... and it seems that a plumber who heard that Gould and Preisner was a non-union house ceased working on the job of his own volition because of non-union men being employed on that particular job. (21 LRRM 2712, 2715).

<sup>30</sup> The circumstances surrounding Moller's resumption of work for LoSasso are not disclosed by the evidence.

hold the constitution and by-laws and to preserve the working rules of the local.

The "By-laws and Working Rules" of Carpenters provide, under Article IV, "Trade Rules":

680      Sec. 2. Any member must cease work when ordered to do so, by the business agent. For violation of this section the penalty is expulsion for any just cause.

Everything considered, the undersigned is satisfied that Johnson, in effect, ordered Moller to leave the 40th Avenue project, just as he previously had ordered him to leave the 45th Avenue project. The undersigned is also satisfied that during their conversation Johnson made it plain to Moller that it was Moller's obligation as a union man to follow such instructions from Johnson, the business agent of the local from which Moller was holding his work permit. However, the undersigned makes no finding that Johnson threatened to fine Moller for failure to comply.

Shortly after Moller, the electricians, and the tile setter had left the 40th Avenue job, Jerry LoSasso telephoned Fisher, president and assistant business manager of IBEW, and asked him why "Moller had been pulled" and if "he had pulled" the electricians on the 40th Avenue job. Fisher denied having pulled the electricians and also denied knowing why Moller had left. LoSasso asked Fisher if he could continue to furnish electricians for the 40th Avenue house. Fisher said that it was "his contention that there was no dispute" as to the 40th Avenue job and that he would try to get the electricians back on that job. Fisher also said that if LoSasso would give him his "word to sign up with Clifford Gould and the Building Trades Council," he would "see to it" that the electricians returned as soon as possible.<sup>51</sup>

The outcome of the dispute between LoSasso and the unions involved is not clear from the record. There is no evidence that any picketing took place at either the 40th or 45th Avenue projects; the only evidence as to conversations

<sup>51</sup> Findings as to the above conversation are made on credited and uncontradicted testimony of Jerry LoSasso.



between union officials and employees of LoSasso concerns the two conversations between Moller and Johnson, the first about November 1, at the 45th Avenue project, and the second, about November 7, at the 40th Avenue house. It is clear that LoSasso continued to use the services of Gould & Preisner at the 45th Avenue project until the electrical work there was completed and that Gould & Preisner's services were not being used on the 40th Avenue project.

### *C. Events pertaining to Doose & Lintner*

About September 25, 1947, Gould & Preisner entered into arrangements with William L. Doose and Louis F. Lintner, individuals engaged in a general contracting business in Denver under the name of Doose & Lintner Construction Company, to perform certain electrical work, including the furnishing of materials, on a building being erected by Doose & Lintner at 1068 Bannock Street called the Chapman Building.<sup>32</sup> Doose & Lintner also entered into arrangements with other subcontractors to perform essential work on that building.<sup>33</sup> About October 21, 1947, Gould & Preisner, pursuant to their arrangements with Doose & Lintner, began work at the Bannock Street site.<sup>34</sup>

The evidence establishes that Gould & Preisner's electricians were the only non-union employees who worked on the

<sup>32</sup> Part of this building, a two-story commercial structure approximately 80 feet by 100 feet and of masonry construction, which was being built for Chapman Brothers on a cost plus basis, was leased to a Chicago firm after construction had started.

<sup>33</sup> The brick work, the cement work, the steel work, and apparently the plumbing were subcontracted.

<sup>34</sup> The testimony of witnesses called by the General Counsel is contradictory and inconsistent concerning arrangements between Doose & Lintner and Gould & Preisner as to the amount and type of work to be performed and as to when such work was performed. It appears to the undersigned, however, from a study of all the evidence, that the preliminary electrical work performed by Gould & Preisner required relatively little time and consisted of putting in several feeders preparatory to the pouring of concrete and that extensive electrical work by Gould & Preisner did not get under way until January 1948. In any event, the dates and findings in the above paragraph are based on admitted allegations of the complaint. Dates and other findings which appear hereafter in this division of the report are based upon documentary evidence, uncontradicted testimony which is credited, or upon the undersigned's appraisal of all of the evidence viewed in the light of the credibility of witnesses.

Bannock Street building either as direct employees of Doose & Lintner or as employees of their various subcontractors. About the middle of November 1947, Jack Fisher of IBEW met Earl Gould on the sidewalk in front of the Patterson Building in Denver and asked him what they were going to do about the Chapman Building. Fisher pointed out that Gould & Preisner's employees were the only non-union men on that job and said that he did not see how it could progress with them working on it. Gould stated that they had a contract to perform the electrical work there and that they "proposed to carry on with it." Approximately a month later, about the middle of December, Fisher again met Gould, this time in the basement of the City and County Building, and again raised the question of non-union electricians working on the Chapman Building with union men. Gould insisted that they were going to complete the electrical work unless they were "bodily put off." Fisher stated that the situation would be difficult for Gould & Preisner and for Doose & Lintner.

It appears from all of the evidence that, at the time of the above two conversations, Gould & Preisner had already completed certain preliminary work but had not yet started extensive activities. However, on or shortly before January 8, 1948, Gould & Preisner sent electricians to the Chapman Building to continue electrical work thereon for Doose & Lintner.<sup>35</sup> On the morning of January 8, a representative of IBEW, either Business Manager Williams or Assistant Business Manager Fisher, reported to the Council's business representative, Clifford Gould, that Gould & Preisner

<sup>35</sup> See footnote 24. The undersigned deems it unnecessary to determine to what extent either Preisner or Gould may have consulted with Chapman Brothers or with other prospective occupants of the Chapman Building in arranging some of the details of the electrical work undertaken in January. In any event, the undersigned is satisfied on the record as a whole that whatever else may have been involved or contemplated during the period now to be considered, Gould & Preisner were responsible to Doose & Lintner (who were constructing the Chapman Building on a cost plus basis) for a substantial part, if not all, of the electrical work which they performed on that building during January. Doose & Lintner's letter of January 22, 1948, quoted in part below, terminating the services of Gould & Preisner, is persuasive on this point.

were being used by Doose & Lintner on the Bannock Street job.

About 9:30 on the morning of January 8, the Council's Board of Business Agents held a meeting in the hall 682 of the Council's Denver office. This meeting was attended by a large majority of the business agents of the various unions affiliated with the Council. The minutes of the meeting show that, among the representatives of affiliated unions present, were Williams and Fisher of IBEW, Paul Johnson of Carpenters, and Michael McDonough of Plumbers.<sup>36</sup> With respect to the Chapman Building, that meeting instructed Business Representative Goold "to place a picket on the job stating that the job was unfair" to the Council. In keeping with Council practice, every organization affiliated with the Council was furnished a copy of the minutes of that meeting, which noted the decision to picket Doose & Lintner's Bannock Street construction.

On the morning of January 8, shortly after the above meeting, Goold, Fisher, and McDonough went to the Chapman Building where various of them engaged in a number of conversations which will now be considered, without attempting to determine the order in which they took place. Goold and Fisher, in discussing the situation with Lintner, asked if the job was union and Lintner said that it was. When the two union representatives asked about the electrical work, Lintner admitted that Gould & Preisner "might do it." Goold and Fisher reminded Lintner that Gould & Preisner were non-union and that union men could not work on the job with non-union men. Goold told Lintner that he would have to "notify his members" by picketing that non-union men were working on the job. During their 15-minute conversation, Lintner "tried to talk them out of it," but without success.

<sup>36</sup> Unions which also participated through representatives in the January 8 meeting, but which are not named respondents herein, include unions representing, respectively, lathers, iron workers, roofers, linoleum layers, heat and frost insulators, teamsters, glaziers, boilermakers, and hod carriers and laborers.



In a discussion that same morning, which Goold and McDonough had with Doose<sup>37</sup> concerning union men not working with non-union men, McDonough told Doose that if he were a contractor he probably could get rid of Gould & Preisner. In addition, Goold told Doose that if Gould & Preisner worked on the job they would have to put a picket on it to notify their members that the job was unfair.

Sometime during the conversations which took place on the morning of January 8, and in the presence of Lintner, at least, Fisher and McDonough told Gould that, unlike a bungalow about which they would not worry too much, the Chapman Building was "too big a job" for the unions to permit non-union electricians to work on it. Gould insisted that they had a contract and would continue on the job until it was completed. McDonough stated that in that event there would be a picket on the job and that union men, knowing that union bylaws and regulations provide that no union man can work on a picketed job, would have to leave the job.

It is evident that, on January 8, at the time of the above conversations, there were carpenters and plumbers and probably some laborers at work on the Chapman Building, all of them union men. It is also evident that, in order to complete the building, the services of electricians, carpenters, plumbers, plasterers, and painters, among others, would be required. On the evening of January 8, in anticipation of the impending picketing, Doose & Lintner sent their carpenters who were then working on their Bannock Street building to another project which they had under construction.<sup>38</sup>

683 On the morning of January 9, Business Representative Goold of the Council placed a picket, a member of the affiliated local union representing hod carriers and laborers, on the Bannock Street job. Goold instructed the picket not to enter the building, to walk on the sidewalk

<sup>37</sup> It appears that at this point Fisher was in the other end of the building, about 100 feet away, with Lintner and Preisner.

<sup>38</sup> Construction work on that project, upon which only members of unions affiliated with the Council were being employed, continued without interruption during the picketing of the Bannock Street project.

in front of the building, to refrain from violence, and to picket peacefully. The picket, who followed Gould's instructions, carried a placard reading, "This Job Unfair to Denver Building and Construction Trades Council." The picket's services were paid for by the Council, and the picketing continued during the period from January 9 through January 22, 1948.

During the approximately 2-week period while the Chapman Building was being picketed, the only employees who reported for work thereon were the non-union electricians of Gould & Preisner; no union employees worked on the building.

On January 22, before Gould & Preisner had completed their work on the project, Lintner telephoned Preisner and told him that he "would have to get off the job so he [Lintner] could continue with his project." Also on January 22, 1948, a letter bearing that date was written to Gould & Preisner on the stationery of Doose & Lintner. This letter, signed by both Doose & Lintner, was exhibited to Clifford Gould before it was mailed. The letter, considered in its entirety and in the context in which it was sent, clearly constituted a written termination of the services of Gould & Preisner prior to the completion by them of the electrical work which they were then performing on the Bannock Street building.<sup>39</sup> The crux of the reason for terminating Gould & Preisner's services is stated in the third paragraph of the letter as follows:

It now appears, however, that your employees are unable to perform services while the employees of other subcontractors are working on the premises. As a result of this difficulty we have been unable to continue the construction work according to plan and according

<sup>39</sup> The letter represents that Gould & Preisner had "completed nearly all of the work" orally agreed upon. In contrast, Gould testified that the work to be performed was only 45 percent completed. The amount of unfinished work is immaterial; on either version, the services of Gould & Preisner were terminated before the work agreed upon had been fully completed.

to our contract with the building owner. We must ask you, therefore, as of this date to terminate all future services for electrical work on the premises in question.

On or about January 23, Gould & Preisner's services having been terminated by the above letter, the Council removed its picket. Shortly thereafter, union employees from "several different crafts" were at work on the Bannock Street project. Although Gould & Preisner, under date of January 24, 1948, wrote Doose & Lintner a two-page letter emphatically protesting the treatment which they were receiving, their electricians were denied entrance to the property and did not work on the Chapman Building thereafter. At the time of the hearing, Doose & Lintner were employing only union labor on their projects.

#### D. Conclusions.

##### 1. General considerations and conclusions.

Careful consideration of the several facets of Section 8 (b) (4) (A) of the Act, in the light of the facts of this case and the various contentions of the General Counsel 684 and of the Respondents,<sup>40</sup> convinces the undersigned that, in its application to the instant matter, Section 8 (b) (4) (A) makes it "an unfair labor practice for a labor organization or its agents . . . to engage in . . . a strike . . . where an object thereof is . . . forcing or requiring . . . any employer . . . to cease doing business with any other person." For reasons now to be considered, the undersigned is satisfied that the Respondents, jointly and severally, are in violation of so much of Section 8 (b) (4) (A) of the Act as is above set forth. As to the questions of constitutionality which have been raised by the Respondents, the undersigned, in the absence of applicable court decisions to the contrary, will assume the constitutionality of the Act.<sup>41</sup>

<sup>40</sup> No attempt is made herein to discuss all of the contentions so ably briefed and so amply supported by citations.

<sup>41</sup> *Matter of Rite-Forn Corset Company, Inc.*, 75 N. L. R. B. 174.



The Respondents herein are four labor organizations which are alleged to have acted through their officers and agents. Agency is not a contested issue in this case. The record establishes that each of the Respondents was represented in material acts by individuals whose positions were clearly official. Thus the Council acted through Clifford Gould, its secretary-treasurer and business representative; IBEW acted through J. R. Fisher, its president and assistant business manager, and through Clyde Williams, its business manager; and Plumber acted through Michael McDonough, its business representative and financial secretary. Hence, the undersigned finds that the Respondents are chargeable with the various activities of their aforesaid agents set out in the foregoing sections of this report.

The undersigned is persuaded that, viewed realistically, the actions of agents of the Respondents above narrated established that the Respondents were engaged in a joint enterprise of which an object was forcing both LoSasso and Doose & Lintner to cease doing business with Gould & Preisner. The joint nature of the enterprise is obvious from an examination of the facts above found. It is equally apparent from a study of the developments in respect to LoSasso, on the one hand, and Doose & Lintner, on the other hand, that the actions of the Respondents do not stand in isolation but rather constitute related phases of their joint endeavor. That *an object*, if not the only object, of what transpired with respect to both LoSasso and Doose & Lintner was to force or require them to cease doing business with Gould & Preisner seems scarcely open to question, in view of all of the facts. And it is clear, at least as to Doose & Lintner, that that purpose was achieved.<sup>42</sup> In any event, it is not necessary to show that the illegal purpose was achieved, but only that the illegal purpose was an object of the actions alleged to constitute unfair labor practices. The undersigned is satisfied that the evidence establishes

<sup>42</sup> It may also have been achieved with respect to LoSasso, as contended in the General Counsel's brief, but the evidence does not so establish.

that the acts hereinafter held to constitute violations of Section 8 (b) (4) (A) had such an illegal object.<sup>43</sup>

685 It should be noted that the only aspect of Section 8 (b) (4) (A) being relied upon herein pertains to strike action by labor organizations. In the undersigned's opinion, other aspects of subsection (A) of Section 8 (b) (4), such as inducement or encouragement of employees to engage in activities for an illegal purpose, are not involved.<sup>44</sup> This is so because the issues in this case turn upon acts by labor organizations which are tantamount to directions and instructions to their members to engage in strike action. The protection afforded by Section 8 (c) of the

<sup>43</sup> While the picketing of Doose & Lintner's Bannock Street construction appears to have had the illegal object as its sole purpose, it is not clear that the two instances involving Moller on the two LoSasso projects had no other purposes, especially since LoSasso was using non-union labor other than that being supplied by Gould & Preisner. Be that as it may, the undersigned has no doubt that Moller's being "pulled" from LoSasso's 45th Avenue project on November 1 had, as a major if not its sole purpose, the illegal object of forcing LoSasso to cease doing business with Gould & Preisner, whose non-union electricians were working on November 7, at the 40th Avenue project; may also have involved other objects which are not fully disclosed by the evidence. Nevertheless, although Gould & Preisner were not being used on the 40th Avenue house, the undersigned considers significant Fisher's statement to LoSasso shortly after Moller had been taken off the 40th Avenue house that, if LoSasso would promise to sign up with Gould and the Council, the electricians who also had left that job would be returned. While the matter is not without doubt, the undersigned believes that the circumstances warrant the inference that LoSasso's use of Gould & Preisner on the 45th Avenue job was a factor complicating the situation on the 40th Avenue project on November 7, when Moller and others left that job. In any event, that incident is considered substantially a repetition of the November 1 incident, and is not relied on as establishing any material facts different from what transpired on November 1. Hence, the conclusions and recommendations below would not be varied or influenced if the November 7 incident were ignored.

<sup>44</sup> While the matter is complex, the undersigned is of the opinion, from his study of the Act and of its legislative history, that, where certain objects are involved, 8 (b) (4) (A) prohibits a labor organization or its agents from engaging in four general types of activities: (1) striking—wherein the labor organization withdraws the services of its own members; (2) boycotting on the job—wherein the labor organization's own members, in the course of their employment, concertedly refuse to handle certain goods or render services; (3) inducing or encouraging employees, not members of the union taking the action, to go on strike; and (4) inducing or encouraging employees, not members of such union, to engage in an on-the-job boycott—wherein such employees, in the course of their employment, concertedly refuse to handle certain goods or render services.

Act "to the expression of "any views, argument or opinion" does not pertain where, as here, the issues raised under Section 8 (b) (4) (A) turn on official directions or instructions to a union's own members. Such directions or instructions are verbal acts which are not protected by Section 8 (c) and do not have to be shown to contain any "threat of reprisal or force or promise of benefit" to exempt them from the protection of Section 8 (c). Accordingly, the undersigned deems it unnecessary to determine to what extent, if at all, any of the members of any of the respondent labor organizations, whether by virtue of statements containing threats or because of provisions in constitutions or by-laws for punitive action for disobedience to duly issued strike orders, were "induced or encouraged" beyond the protection of Section 8 (c) to take any duly directed strike action."

<sup>45</sup> Section 8 (c) reads:

The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of this Act, if such expression contains no threat or reprisal or force or promise of benefit.

It would appear, for reasons discussed hereinafter, that Section 8 (c) of the Act normally would be involved only in the third and fourth types of action discussed above, which involve inducing and encouraging employees.

<sup>46</sup> The General Counsel's brief stresses the coercive nature of Johnson's alleged threat on November 7 to fine Motter and the coercive nature of provisions in constitutions and by-laws of the respondent unions in relation to the picketing of Doose & Lintner. Such aspects appear beside the point where, as here, strike action results from a union or its agents directing its own members to engage in a strike for a prescribed purpose. Under such circumstances, it would appear, that the Board is not required to determine whether the union's organizational structure is such as to give it sufficient disciplinary control over its members so that instructions to strike have implicit within them some "threat of reprisal or force or promise of benefit." The undersigned's interpretation does not infringe in any way upon "the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein." It only prevents a union or its agents from "engaging in a strike" for a prescribed purpose by directions to its own members to strike, regardless of the union's power or lack of power to punish its members for failure to comply. In this connection, it should be noted that the General Counsel did not introduce constitutions or by-laws of unions other than the Respondents.



## 2. The unfair labor practices as to LoSasso.

In the light of the foregoing general considerations and conclusions, and upon the facts found in Section III, B, of this report, the undersigned concludes, as follows with respect to the unfair labor practices alleged as to LoSasso.

The two conversations which Business Representative Johnson of Carpenters had with Moller on November 1 and on November 7, 1947, respectively, contained what amounted to orders to Moller to go on strike. It is clear from Carpenters' "By-laws and Working Rules," above quoted, that any member of Carpenters is required to cease work when ordered to do so by its business agent. Moller, who held a work permit from Carpenters, was in the position of a member of Carpenters so far as his subordination to Johnson was concerned. Thus Moller twice received official orders from Carpenters, through its agent, Johnson, to go on strike. Hence, when Moller, on each occasion, complied with those instructions, Carpenters was engaging in a strike for a prescribed purpose.

The fact that no finding appears herein that any other employee of LoSasso left his employment in concert with Moller on either of the two occasions does not alter the fact that Moller's leaving under Johnson's orders constituted, both on November 1 and on November 7, strike action.<sup>47</sup> In addition, the surrounding circumstances show that, at least as to the Council, Moller's strike action was the product of joint activity engaged in by the Council as well as by Carpenters.<sup>48</sup> Accordingly, the undersigned concludes that the Council and Carpenters, by causing Moller on November 1 and again on November

<sup>47</sup> This finding rests in no way on the possibility that more detailed evidence might have connected Moller's leaving with the leaving of other employees on either or both occasions. It rests rather upon the fact that Moller's leaving constituted a withdrawal of his services in connection with a labor dispute on orders from his union.

<sup>48</sup> IBEW also apparently was involved in the LoSasso situation, although not specifically so named in the complaint. The undersigned, believing that a realistic approach to the situation so requires and that the pleadings and the litigation so warrants, treats the course of conduct revealed by the entire record as a joint enterprise.

ber 7, 1947, to quit his employment with LoSasso upon orders that he do so, engaged in strike action proscribed by Section 8 (b) (4) (A) of the Act.

The evidence does not establish that the Council or Carpenters engaged in unfair labor practices similar to the foregoing with respect to "other employees" of LoSasso, as alleged in the complaint.<sup>49</sup> Nor does the evidence sustain the allegation of the complaint that the Council and Plumbers took any action violative of the Act with respect to Michael Capra.

### 3. The unfair labor practices as to Doose & Lintner.

The "By-laws" of the Denver Building and Construction Trades Council contained, at times material herein, the following provisions:<sup>50</sup>

#### ARTICLE I-B

Section 1. It shall be the duty of this Council to stand for absolute *closed shop* conditions on all jobs in the City of Denver and jurisdictional surroundings. Notifications shall be given to all contractors to protect themselves in their contracts with the usual union labor clauses, so that they will be protected on materials in case of strike. [Emphasis in original.]

Section 2. The Board of Business Agents, by majority vote at any regular meeting, shall have the power to declare a job unfair and remove all men from the job. They shall also have the power to place the men back on the job when satisfactory arrangements have been made.

Section 3. Any craft refusing to leave a job which has been declared unfair or returning to the job before being ordered back by the Council or its Board of

<sup>49</sup> No evidence was adduced as to Blacky Stephen who was named in the bill of particulars as "the particular employee," other than Moller, who was induced by the Council and Carpenters to leave LoSasso's employ.

<sup>50</sup> Concerning anticipated changes in the by-laws to conform them to the Act, Gould, on April 2, 1948, testified, "By June 1st, we will have in effect our new by-laws subject to the approval of our attorneys."

Agents shall be tried, and if found guilty, shall be fined the sum of \$25.00.

Section 4. Refusal of any organization to pay said fine shall be followed by expulsion from this Council. An organization so expelled shall pay said fine and one complete back quarter dues and per capita before being reinstated.

#### ARTICLE XI-B

Section 1. Strikes must be called by the Council or the Board of Agents in conformity with Article I-B, Sections 1-2. When strikes are called the Council shall have full jurisdiction over the same, and any contractor, who works on a struck job, or employs non-union men to work on a struck job, shall be declared unfair and all union men shall be called off from his work or shop.

688 Section 2. The representative of the Council shall have the power to order all strikes when instructed to do so by the Council or Board of Agents. Any member of an affiliated craft who refuses to stop work when ordered to do so by the Council or Board of Agents, shall be reported for action in the Council. All employees on a struck job shall leave the same when ordered to do so by the Council Agent and remain away from the same until such time as a settlement is made, or otherwise ordered.

Upon the basis of the foregoing relevant provisions of the Council's by-laws, the general considerations and conclusions stated above, and the facts found in Section III, C, of this report, the undersigned concludes as follows with respect to the unfair labor practices alleged as to Doose & Lintner.

Manifestly, the action with respect to picketing Doose & Lintner, taken on January 8, 1948, by the Council's Board of Business Agents, which included (among others) agents



of the Respondents, was taken pursuant to the above provisions of the Council's by-laws. The evidence clearly establishes that, pursuant to the decision to picket Doose & Lintner, the Council (through Goold), IBEW (through Fisher), and Plumbers (through McDonough), advised Doose & Lintner on January 8 that their Bannock Street project would be picketed unless Gould & Preisner's services were dispensed with. The evidence also establishes that on January 9 and thereafter the Council placed a picket on that project.

When the foregoing is considered in its total setting, it is evident that the action of the Council, IBEW, and Plumbers, in advising Doose & Lintner of the impending picketing, constituted the initial phase of the joint strike action which had been determined upon in accordance with the Council's bylaws.<sup>51</sup> It is also evident that the picket sign announcing that the Bannock Street project was unfair to the Council constituted a clear signal, in the nature of an order, to the members of the respondent unions, as well as to the members of other unions affiliated with the Council but not named as respondents herein,<sup>52</sup> to withhold their services for the duration of the picketing. This strike action, of which the picketing was an integral and inseparable part, had the planned and expected effect of denying the services of all union workmen to Doose & Lintner while they continued to utilize the services of Gould & Preisner. Yet as soon as the illegal objective of the Respondents' strike action had been achieved, the picket, the signal to

<sup>51</sup> This is not to be interpreted as a holding that a mere threat to strike for a proscribed purpose, standing alone, would constitute a violation of Section 8 (b) (4) (A). Here, however, the threat was part of a course of conduct which resulted in strike action. It should be noted that while no representative of Carpenters was among the group of union agents which went to the Bannock Street project on the morning of January 8, after strike action had been voted, there was an agent of Carpenters present at the meeting at which it was determined to take strike action.

<sup>52</sup> Since such unions are not named as respondents, no recommendation is hereafter made as to them, except that they be sent copies of the notice attached hereto. This is deemed necessary because their agents engaged jointly with agents of the Respondents in determining at the meeting of January 8 to take strike action, and because they received minutes recording that action.

union workmen that a strike was in progress, was removed. Thereupon union workmen were again available to Doose & Lintner. Thus the joint enterprise of the Respondents was accomplished within the framework and intent of the Council's bylaws but in violation of Section 8 (b) (4) (A) of the Act.

In connection with the foregoing conclusions, two matters discussed in the briefs should be mentioned. The first concerns the question of "involuntary servitude." The findings and recommendations herein pertain to labor organizations; no finding or recommendation runs  
689 against any individual employee. Hence nothing is involved which transgresses any constitutional guarantee against involuntary servitude or which contravenes Section 502 of the Act, since no requirement is made that any individual employee "render labor or service without his consent" and no restriction is placed upon "the quitting of his labor by any individual employee."<sup>53</sup>

The second matter, the picketing, which was clearly peaceful in nature, has been extensively briefed. It has received the careful consideration of the undersigned, especially in connection with constitutional guarantees as to freedom of speech.<sup>54</sup> No attempt will be made to discuss the numerous cases cited in the briefs, since the undersigned believes, upon due deliberation, that all of these cases are distinguishable on their facts and that none is controlling. In the undersigned's judgment, the facts of this case establish that the picketing involved herein was essentially a continuing verbal act and was an integral and inseparable part of a strike which was repugnant to the Act because it was called for a purpose proscribed by Section 8 (b) (4) (A) thereof. This picketing was the signal, far clearer than any wink or nod, whereby the Respondents or-

<sup>53</sup> The above paragraph applies equally to the conclusions as to Moller's leaving the LoSasso project.

<sup>54</sup> The inapplicability of Section 8 (c) of the Act to the picketing problem has been considered in Section III, D, 1, above.

dered their members to refrain from work for the duration of such signal.<sup>55</sup>

It thus appears that the picketing here under consideration is essentially not speech but rather a verbal facet of an illegal strike. As such, it is no more insulated by a legal concepts protecting speech than a statement which is part of the *res gestae* is insulated by the rule against hearsay. Everything considered, the undersigned concludes that the picketing in this case is not protected speech. It should be noted, however, that nothing in this report is intended to foreclose the Respondents from utilizing any type of publicity as to the nature of any labor dispute, so long as the form and method of such publication is distinguishable from, and does not incorporate within it, anything which, realistically interpreted, is tantamount to an order to their members to take strike action for any purpose repugnant to the Act.

The allegation that the Council placed both Doose & Lintner and Gould & Preisner on an "unfair list" on a blackboard and so advised its constituent unions remains to be considered. The evidence does not establish that Doose & Lintner's name was ever placed upon the unfair list on the blackboard in the Council's office, although Gould & Preisner's name has been posted on that blackboard for many years. Nor is it clear from the evidence what force and effect this unfair list has or what action, if any, the constituent unions or their members were expected—or required to take by virtue of the posting of any employer's name on the blackboard as unfair. In any event, the record does not establish to the undersigned's satisfaction that the posting of Gould & Preisner's name constituted a signal for any action prohibited by Section 8 (b) (4) (A) of the Act, or was violative thereof. Further, the undersigned does not construe the circulation by the Council to its affil-

<sup>55</sup> It is manifest, from the Council's by-laws, that declaring a project "unfair," the word appearing on the picket sign, is tantamount to declaring a project on strike and ordering the members of the affiliated unions to leave the job and to remain away from it until "satisfactory arrangements have been made."



iated unions of the minutes of the meeting setting forth the decision of January 8 of the Board of Business Agents to picket Doose & Lintner as an act placing Doose & Lintner on an unfair list, but rather as an interunion communication confirming the official nature of the strike signal which it had been determined to give to union members by placing a picket on the Bannock Street project.

690 4. The Respondent's proposed findings and conclusions

The undersigned hereby rules as follows with respect to the jointly filed proposed findings, conclusions, and recommendations of the Respondents: proposed findings numbered 1, 2, 4, 5, 12, and 13 are accepted; proposed findings numbered 3, 6, 7, 8, 9, 10, 11, 14; and 15 are rejected; proposed conclusions numbered 1, 2, 3, 4, 5, and 6 are rejected; and the proposed recommendation that the complaint be dismissed is rejected, except to the extent that is it recommended that portions of the complaint be dismissed.

IV. The effect of the unfair labor practices upon commerce

The activities of the Respondents set forth in Section III, above, occurring in connection with the operations of Gould & Preisner set forth in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead, and have led, to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The remedy

It has been found that the Respondents, jointly and severally, have engaged in strike action violative of Section 8 (b) (4) (A) of the Act. It will therefore be recommended that the Respondents, jointly and severally, cease and desist from engaging in any strike action (including instructing or ordering their members individually to leave their employment and authorizing or directing the use of picket-

ing as a signal, direction, or order to their members<sup>56</sup> to engage in any strike action) where an object of such strike action is to force or require Tony LoSasso or Doose & Lintner or any other person to cease doing business with Gould & Preisner.

It will further be recommended that the Respondents take certain affirmative action designed to effectuate the policies of the Act. However, nothing in these recommendations is to be construed as prohibiting the Respondents, jointly or severally, from publicizing the facts of labor disputes, provided such publication is severable from strike action for purposes prescribed by the Act.

Upon the basis of the above findings of facts, and upon the entire record in the case, the undersigned makes the following:

#### Conclusions of Law

1. Earl C. Gould and John C. Preisner, doing business as Gould & Preisner, are engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

2. Denver Building and Construction Trades Council; United Brotherhood of Carpenters and Joiners of America, A. F. L., Local 55; International Brotherhood of Electrical Workers of America, A. F. L., Local 68; and United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, A.F.L., Local 3, are labor organizations within the meaning of Section 2 (5) of the Act.

691 3. By engaging in strike action where an object thereof was to force or require Tony LoSasso and Doose & Lintner Construction Company to cease doing business with Gould & Preisner, the Respondents have engaged in unfair labor practices within the meaning of Section 8 (b) (4) (A) of the Act.

<sup>56</sup> With respect to the Council, "members," as here used, means the members of all unions affiliated with the Council who are subject to Council order or action during strikes, as provided in Article XI-B, Section 2, of the by-laws; and also the affiliated unions themselves, which are

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

5. The Respondents have not, jointly or severally, engaged in unfair labor practices, within the meaning of Section 8 (b) (4) (A) of the Act, by ordering or inducing any employee of Tony LoSasso other than John Moller to engage in strike action against LoSasso; by inducing Michael A. Capra to leave his employment on a LoSasso project; or by placing Doose & Lintner Construction Company or Gould & Preisner on an unfair list.

#### RECOMMENDATIONS

Upon the basis of the foregoing findings of facts and conclusions of law, the undersigned recommends that, jointly and severally, the Respondents, Denver Building and Construction Trades Council; United Brotherhood of Carpenters and Joiners of America, A. F. L., Local 55; International Brotherhood of Electrical Workers of America, A. F. L., Local 68; and United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, A. F. L., Local 3, their officers and agents shall:

1. Cease and desist from engaging in any strike action (including instructing or ordering their members individually to leave their employment and authorizing or directing the use of picketing as a signal, direction, or order to their members<sup>57</sup> to engage in any strike action) where an object of such strike action is to force or require Tony LoSasso or Doose & Lintner Construction Company or any other person to cease doing business with Gould & Preisner.

2. Take the following affirmative action which the undersigned finds necessary to effectuate the policies of the Act:

(a) Post in conspicuous places in the respective Denver, Colorado, business offices of Denver Building and Construction Trades Council; United Brotherhood of Carpenters and Joiners of America, A. F. L., Local 55; Interna-

<sup>57</sup> See footnote 56.



tional Brotherhood of Electrical Workers of America, A. F. L., Local 68; and United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, A. F. L., Local 3, copies of the notice attached hereto as an appendix. Copies of the said notice, to be furnished by the Regional Director for the Seventeenth Region, shall, after being duly signed by officials of the respective Respondents, be posted by the Respondents in their respective business offices immediately upon receipt thereof and maintained for a period of sixty (60) days thereafter in conspicuous places in said offices, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the respective Respondents to insure that said notices are not altered, defaced, or covered by any other material;

(b) Send copies of the notice attached hereto as an appendix, after duly signing same, by registered mail to Tony LoSasso, to Doose & Lintner Construction Company,<sup>58</sup> and to each of the labor organizations (other than the Respondents affiliated with Denver Building and Construction Trades Council; and

(c) Notify the Regional Director for the Seventeenth Region in writing within twenty (20) days from the date of the receipt of this Intermediate Report what steps the Respondents have taken to comply herewith.

It is further recommended that, unless the Respondents shall, within twenty (20) days from the date of the receipt of this Intermediate Report, notify said Regional Director in writing that they will comply with the foregoing recommendations, the National Labor Relations Board shall issue an order requiring the Respondents to take the action aforesaid.

It is also recommended that the complaint be dismissed insofar as it alleges that the Respondents violated Section 8 (b) (4) (A) of the Act by ordering or inducing any em-

<sup>58</sup> Since LoSasso and Doose & Lintner are not parties and will not be served with copies of this Intermediate Report, the undersigned deems it necessary, in order to dissipate the effects of the Respondents' unfair labor practices, that they receive copies of the signed notice.

ployee of LoSasso other than John Moller to engage in strike action against Tony LoSasso; by inducing Michael A. Capra to leave his employment on a LoSasso project; and by placing Doose & Lintner Construction Company or Gould & Preisner on an unfair list.

As provided in Section 203.46 of the Rules and Regulations of the National Labor Relations Board, Series 5, effective August 22, 1947, any party may, within twenty (20) days from the date of service of the order transferring the case to the Board, pursuant to Section 203.45 of said Rules and Regulations, file with the Board, Rochambeau Building, Washington 25, D. C., an original and six copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and six copies of a brief in support thereof; and any party may, within the same period, file an original and six copies of a brief in support of the Intermediate Report. Immediately upon the filing of such statement of exceptions and/or briefs, the party filing the same shall serve a copy thereof upon each of the other parties. Proof of service on the other parties of all papers filed with the Board shall be promptly made as required by Section 203.85. As further provided in said Section 203.46, should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date of service of the order transferring the case to the Board.

In the event no Statement of Exceptions is filed as provided by the aforesaid Rules and Regulations, the findings, conclusions, recommendations, and recommended order herein contained shall, as provided in Section 203.48 of said Rules and Regulations, be adopted by the Board and become its findings, conclusions, and order, and all objections and exceptions hereto shall be deemed waived for all purposes.

EARL S. BELLMAN,  
Trial Examiner.

Dated: July 13, 1948.

APPENDIX  
NOTICE

PURSUANT TO

THE RECOMMENDATIONS OF A TRIAL EXAMINER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby give notice that:

WE WILL NOT, jointly or severally, engage in any strike action (including instructing or ordering our members individually to leave their employment and authorizing or directing the use of picketing as a signal, direction, or order to our members\* to engage in any strike action) where an object of such strike action is to force or require Tony LoSasso or Doose & Lintner Construction Company or any other person to cease doing business with Gould & Preisner.

DENVER BUILDING AND CONSTRUCTION TRADES COUNCIL,

By.....  
(Title of Officer)

Dated.....

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA,  
A.F.L., LOCAL 55,

By.....  
(Title of Officer)

Dated.....

\* With respect to the Council, "members," as here used, means the members of all unions affiliated with the Council, whether or not they have signed this notice, who are subject to Council order or action during strikes, as provided in Article XI-B, Section 2, of the Council's by-laws, and also the affiliated unions themselves, which are subject to penalties provided in Article IIB, Sections 3 and 4, of said by-laws.



**INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS OF AMER-  
ICA, A.F.L., LOCAL 68,**

By.....  
(Title of Officer)

Dated.....

**UNITED ASSOCIATION OF JOURNEY-  
MEN AND APPRENTICES OF THE  
PLUMBING AND PIPE FITTING IN-  
DUSTRY OF THE UNITED STATES  
AND CANADA, A.F.L., LOCAL 3,**

By.....  
(Title of Officer)

Dated.....

This notice must remain posted for sixty (60) days from the date hereof, and must not be altered, defaced, or covered by any other material.

649

Case No. 30-CC-2

**Statement of Exceptions of Respondent IBEW Local 68.**

Respondent excepts to all adverse findings of fact and conclusions in the Trial Examiner's Intermediate Report and his failure to make findings and conclusions required by the law and the facts. In particular, respondent excepts to the following:

1. The finding that Gould and Preisner are engaged in commerce within the meaning of the Act.
2. The conclusion that Federal District Judge Symes' ruling on commerce in the injunction case does not constitute res judicata in this proceeding.
3. The failure to find that the necessary relationship to commerce of the labor practices on the construction jobs in this case had not been proved by a preponderance of the testimony.
4. The finding that the picketing and related circumstances on the Bannock Street job constituted an order or signal to strike.

5. The failure to find that the picketing and related circumstances on the Bannock Street job had not been proved by a preponderance of the testimony to be anything more than an exercise of free speech protected by section 8 (c) of the Act.

650 6. The failure to find that the facts and related circumstances on the Bannock Street job had not been proved by a preponderance of the testimony to constitute a secondary boycott prohibited by section 8 (b) 4 (A) of the Act or that there had been sufficient proof that the object of the actions on this job was to force or require Doose and Lintner to cease "doing business" with Gould and Preisner within the meaning of the Act.

7. The finding that Johnson ordered Moller to leave the 40th Avenue and 45th Avenue jobs.

8. The failure to find that Johnson's conversations with Moller had not been proved by a preponderance of the testimony to be anything more than a notification that non-union men were on the job and thus a protected exercise of free speech under section 8 (c) of the Act.

9. The failure to find that the facts and related circumstances on the 45th Avenue job had not been proved by a preponderance of the testimony to constitute a secondary boycott prohibited by sections 8 (b) (4) (A) of the Act or that there had been sufficient proof that the object of the actions on this job and the 40th Avenue job was to force or require Lo Sasso to cease "doing business" with Gould and Preisner within the meaning of the Act.

10. The finding that the trades other than plumbers which had not come on the job prior to the commencement of the picketing were engaged in a strike within the meaning of the Act.

11. The finding that the transfer of the carpenters by order of Doose and Lintner, prior to the commencement of the picketing constituted a strike within the meaning of the Act.

12. The failure to conclude that a withdrawal from employment by one man (Moller) could not constitute a "strike" within the meaning of section 501 (c) of the Act.

13. The implied conclusion that the recommended order is within the powers of the National Labor Relations Board.

14. The failure to find that the allegations in the complaint had not been proved by the testimony.

15. The assumption that the application of the Taft-Hartley Act recommended in the Report is constitutional.

651 The specific exceptions above enumerated are not intended to limit the generality of the first paragraph nor are they intended to limit additional specific objections enumerated in the attached brief.

631

Case No. 30-CC-2

### **Order Transferring Case to the National Labor Relations Board.**

A hearing in the above-entitled case having been held before a duly designated Trial Examiner and the Intermediate Report of the said Trial Examiner, a copy of which is annexed hereto, having been filed with the Board in Washington, D. C.,

IT IS HEREBY ORDERED, pursuant to Section 203.45 of National Labor Relations Board Rules and Regulations, Series 5, that the above-entitled matter be, and it hereby is, transferred to and continued before the Board.

Dated, Washington, D. C., July 16, 1948.

By direction of the Board:

LOUIS R. BECKER,

Acting Executive Secretary

NOTE.—Communications concerning compliance with the Intermediate Report should be with the Director of the Regional Office issuing the complaint.

Your attention is specifically directed to the concluding paragraph of the Intermediate Report in respect to your



right to file exceptions, briefs, and to request oral argument. Please note that exceptions and brief must be filed as separate documents.

633

### **Request for Oral Argument.**

Come now the DENVER BUILDING AND CONSTRUCTION TRADES COUNCIL, and UNITED ASSOCIATION OF JOURNEYMEN, PIPE FITTERS, AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, A.F.L., LOCAL 3, through their attorneys, Philip Hornbein and Philip Hornbein, Jr., and respectfully request that leave be granted to present oral argument before the Board in this matter.

Dated at Denver, Colorado, this 19th day of July, A. D. 1948.

**PHILIP HORNBEIN,**  
**PHILIP HORNBEIN, JR.,**

Attorneys for Denver Building and Construction Trades Council, and United Association of Journeymen, Pipe Fitters, and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, A.F.L., Local 3.  
620 Symes Building, Denver 2, Colorado.

634

### **Request for Oral Argument**

Comes now the INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS OF AMERICA, A.F.L., LOCAL 68, through its attorney, Charles T. Mahoney, and respectfully requests that leave be granted to present oral argument before the Board in this matter.

Dated at Denver, Colorado, this 19th day of July, A. D., 1948.

CHARLES T. MAHONEY,

Attorney for the International Brotherhood of Electrical Workers of America, A.F.L., Local 68

405 Symes Building, Denver 2, Colorado.

635

### Request for Oral Argument.

Comes now the UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, A.F.L., LOCAL 55, through their attorneys Wayne C. Williams and Wayne D. Williams, and respectfully request that leave be granted to present oral argument before the Board in this matter.

Dated at Denver, Colorado, this 19th day of July, A. D. 1948.

WAYNE C. WILLIAMS,

WAYNE D. WILLIAMS,

Attorneys for United Brotherhood of Carpenters and Joiners of America, A.F.L., Local 55.

926 First National Bank Building, Denver 2, Colorado.

655

### Notice of Hearing.

PLEASE TAKE NOTICE that, pursuant to authority vested in the National Labor Relations Board under the National Labor Relations Act, as amended, (Public Law 101—80th Congress, 1st Session) a hearing will be held before the National Labor Relations Board on Tuesday, January 11, 1949, at 10:00 a.m., or as soon thereafter as the Board may hear you, in the Hearing Room at 815 Connecticut Avenue, Northwest, Washington, D. C., for the purpose of oral argument in the above entitled matter. Argument will be limited to one-half hour for each party, and you are hereby advised that in view of the Board's docket, no request for additional time made at the hearing will be granted.

You may appear and be heard if you so desire.

Should the party requesting oral argument decide not to appear, such party must immediately notify the Board and all other parties. This is necessary in order to avoid serious inconvenience and expense to other parties.

Dated, Washington, D. C., December 23, 1948.

By direction of the Board:

FRANK M. KLEILER  
Executive Secretary

657 **Carpenter's Request for a Postponement of  
Oral Argument.**

WT054 PD—DENVER COLO 28 1030A—

NATIONAL LABOR RELATIONS BOARD

1948 DEC 28

RE GOULD AND PREISNER DENVER BUILDING AND CONSTRUCTION TRADES COUNCIL 30-CC-2 ON BEHALF OF CARPENTERS LOCAL 55 REQUEST POSTPONEMENT HEARING FOR ORAL ARGUMENT UNTIL ANY DATE IN FEBRUARY 1949, REASON JANUARY TRIALS SCHEDULED SEVERAL MONTHS AGO PLUS NECESSARY APPEARANCES BEFORE COMMITTEES OF COLORADO LEGISLATURE—

WAYNE D. WILLIAMS ATTORNEY FOR CARPENTERS LOCAL 55—

RE PREISNER 30-CC-2 55 1949 55—

658 **Telegram of Board.**

NATIONAL LABOR RELATIONS BOARD  
N.L.R.B.

CMM:LP

12/31/48

Gould & Preisner, Att: Stanley W. Prisner, 407 University Building, Denver, Colorado.

Clyde F. Waers, Director, NLRD—Denver

Hornbein & Hornbein, Att: Philip Hornbein, Jr., 620 Symes Building, Denver, Colorado.

O'Donoghue, Dunn, Mills & Walsh, Att: Martin F. O'Donoghue, Esq., Tower Building, Washington, 5, D. C.



William E. Leahy, 821—15th St. N.W., Wash. D.C.

Wayne D. Williams, 926 1st Nat'l Bk Bldg., Denver, Colorado (2)

Louis Sherman, Esq., 1200—15th St., N.W., Washington, 5, D. C.

Charles T. Mahoney, 405-9 Symes Building, Denver, Colorado.

RE: GOULD & PREISNER, DENVER BUILDING & CONSTRUCTION  
TRADES COUNCIL, 30-CC-2, REQUEST OF CARPENTERS LOCAL 55  
FOR POSTPONEMENT OF HEARING FOR ORAL ARGUMENT DENIED

NATIONAL LABOR RELATIONS BOARD

FILE

659 **Motion to Consolidate for Oral Argument.**

Come now Martin F. O'Donoghue and Philip Horbein, Jr., Attorneys for Denver Building and Construction Trades Council, Wayne C. Williams and Wayne D. Williams, Attorneys for United Brotherhood of Carpenters and Joiners, Local No. 55, Louis Sherman, Attorney for International Brotherhood of Electrical Workers of America, and William E. Leahy and William J. Hughes, Jr., Attorneys for Building Trades Department, American Federation of Labor, as *Amicus Curiae*, and move the Board to consolidate for oral argument the present case with that of In the Matter of Denver Building and Construction Trades Council and The Grauman Company, Case No. 30-CC-4, on the following grounds:

1. The decision of the Trial Examiner in the present case is directly the opposite of the Trial Examiner in the Grauman case, as to whether the doctrine of *res judicata* requires a trial examiner to follow a prior decision of the  
660 United States District Court, rendered in the same case on injunction proceedings, holding that interstate commerce is not involved.

2. It would obviously conserve the time of the Board to have both the above questions discussed at one oral argument instead of hearing them on two occasions.

3. Counsel are the same in both cases. All counsel of record in both cases join in the present motion.

4. As some of counsel in both cases come from a long distance, Denver, Colorado, there would be an appreciable saving in expense to have both hearings at the same time.

In the event that the Board should grant the present motion, it is suggested that the hearing herein be set for some time during the first two weeks in February. While this might delay the hearing in the present case, it would accelerate the hearing in the Grauman case, which has not as yet been set for oral argument, and would expedite the disposition of both cases.

Respectfully submitted,

MARTIN F. O'DONOGHUE

PHILIP HORNBEIN, JR.

Attorneys for Denver Building  
and Construction Trades Council.

WAYNE C. WILLIAMS

Attorneys for United Brother-  
hood of Carpenters and Joiners.

LOUIS SHERMAN

Attorney for International  
Brotherhood of Electrical  
Workers of America.

WILLIAM E. LEAHY

WILLIAM J. HUGHES, JR.

Attorneys for Building Trades  
Department, A.F.L., as *Amicus  
Curiae*.

665

**Letter from Counsel for Plumbers.**

January 10, 1948.

National Labor Relations Board,  
815 Connecticut Avenue, N. W.,  
Washington, D. C.

Re: Denver Bldg. & Cons. Trades Council Case No.  
30-CC-2; Grauman Company Case No. 30-CC-4.

**GENTLEMEN :**

This is to advise you on behalf of the Denver Building and Construction Trades Council, Plumbers Local Union No. 3 of Denver, the Electrical Workers Local 68 and Carpenters Local 55, that we herewith submit these two cases on the written briefs and waive oral argument.

This decision has been reach (sic) by all counsel of record for and on behalf of the respondent unions.

Very truly yours,

/s/ MARTIN F. O'DONOGHUE.

MFOD:ejw

666

Case No. 30-CC-2.

**Decision and Order.**

On July 13, 1948, Trial Examiner Earl S. Bellman issued his Intermediate Report in the above-entitled proceeding, finding that the Respondents had engaged and were engaging in certain unfair labor practices and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. The Trial Examiner also found that the Respondents had not engaged in certain other unfair labor practices alleged in the complaint and recommended that these allegations be dismissed. Thereafter, the Respondents filed exceptions to the Intermediate Report and supporting briefs. By leave of the Board, Building Trades Department of American Federation of Labor



also filed a brief as *amicus curiae*. Neither Gould & Preisner nor the General Counsel filed exceptions to the Intermediate Report.

The Respondents requested a hearing before the Board for the purposes of oral argument. However, after the Board had granted this request, but denied a postponement,<sup>1</sup> all parties waived oral argument, and none was held.

The Board has considered the rulings of the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case,<sup>2</sup> and  
667 hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the following additions and modifications.

1. The Trial Examiner denied the Respondents' motion to dismiss the complaint on the basis of the *Sperry* decision, *supra*, in which the District Court dismissed the General Counsel's petition, under Section 10 (1) of the Act, for a temporary injunction against the Respondents. The Court held that the unfair labor practices here alleged did not affect commerce within the meaning of the Act, and Respondents contend that this holding is binding upon the Board in the present proceeding. For reasons stated in *Matter of Denver Building and Construction Trades Council, et al.* and *The Grauman Company*, 82 N. L. R. B., No. 5, we affirm the Trial Examiner's ruling on this motion. Upon examination of the record, we find, as did the Trial Examiner, that Gould & Preisner is engaged in commerce within

<sup>1</sup> Chairman Herzog and Member Houston dissented to the denial.

<sup>2</sup> After issuance of the Intermediate Report, the Respondents filed a motion with the Board to include in the record herein the record previously made in *Sperry v. Denver Building and Construction Trades Council, et al.*, 77 F. Supp. 321 (U. S. D. C., Colo.). That record was available at the hearing in this case and no explanation was made for failure to make this motion before the Trial Examiner. Accordingly, the motion is hereby denied.

the meaning of the Act, and that jurisdiction should be exercised.

2. The Trial Examiner found that the Council and the other three Respondents, by picketing Doose & Lintner's Bannock Street project as alleged in the complaint and thereby causing members of local unions affiliated with the Council to quit work on that project, with an object of forcing Doose & Lintner to cease doing business with Gould & Preisner, engaged in strike action in violation of Section 8 (b) (4) (A). We find merit in the Respondents' exceptions only with respect to Carpenters<sup>2</sup> and otherwise agree in substance with the Trial Examiner's finding.

It is true that there is no *direct* evidence that any employee at the project ceased work as a result of the picketing. There is ample indirect proof, however, warranting the inference that the picketing caused the work stoppage both of the plumbers belonging to one of the parties respondent and of laborers belonging to another union affiliated with the Council. Moreover, Clifford Gould, the Council's secretary, admitted that the Council's decision to picket was occasioned at least in part by a desire to take some action with respect to the presence of Gould & Preisner's non-union men on the Bannock Street project.<sup>3</sup> This object is further shown by the warnings of representatives of the Council, Electricians, and Plumbers (Gould, Fisher, and McDonough) to the effect that unless Gould & Preisner's non-union men were removed, a picket would be established and the other workmen, all union members, would

<sup>2</sup> *Matter of J. H. Patterson Co.*, 79 N. L. R. B. 355; *Matter of Akron Brick and Block Co.*, 79 N. L. R. B. 1253; *Matter of Local 74, United Brotherhood of Carpenters and Joiners of America, A.F.L., et al. and Ira A. Watson Company, d/b/a Watson's Specialty Store*, 80 N. L. R. B. 533. Member Houston considers himself bound by the last cited case.

<sup>4</sup> We find no affirmative evidence to warrant a finding that Carpenters authorized the picketing, although the record shows that Johnson, Carpenters' business representative, attended the January 8 meeting of the Council, as did the representatives of a number of other affiliated unions not named respondents. Members Houston and Reynolds dissent in this respect.

<sup>5</sup> In its brief the Council states: "the only way in which it was feasible for the unions to exert economic pressure on Gould and Preisner was to withhold their labor on projects where Gould and Preisner men were employed."

thereupon quit. And as soon as Doose & Lintner removed Gould & Preisner's men, the other employees returned to work.

The Respondents argue that their sole activity consisted of publicizing, through the one peaceful picket, the opinion of the Council that Doose & Lintner was unfair. They further argue that the Board is precluded by Section 8 (c) from using such picketing as evidence of an unfair labor practice, and they rely on that portion of Section 8 (c)

668 which provides that the expressing of any views or opinion may not be used as "evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit." We cannot accede to this argument, for reasons set forth in *Matter of United Brotherhood of Carpenters and Joiners of America, AFL, et al.* and *Wadsworth Building Company*, 81 N. L. R. B., No. 127.<sup>6</sup>

3. The Trial Examiner found in effect that by causing Moller to quit his employment with Lo Sasso, the Council and Carpenters engaged in a strike within the meaning of Section 8 (b) (4) (A) of the Act. We do not agree. Consistent with common usage of the word "strike," implying *collective* or *group* action by a *number* of employees, the Board has always defined a strike as a *combined* effort on the part of a body of workmen employed by the same employer to enforce a demand by withdrawal of their services.<sup>7</sup> It is readily apparent from the language of the entire Act that Congress did not intend to redefine the word, and that a proscribed strike must involve more than a single employee. Thus, Section 8 (b) (4) (A) speaks of a "concerted" refusal by "employees" in the course of "their" employment (emphasis added). Further, the work "strike" is defined in Section 501 of the Act as any "concerted stop-

<sup>6</sup> Members Houston and Murdock, although disagreeing with this finding for the reasons stated in their dissenting opinion in the *Wadsworth* case, deem themselves bound by the majority decisions in that case.

<sup>7</sup> See, for example, *Matter of American Hfg. Concern*, 7 N. L. R. B. 753.



page of work by employees . . . and a concerted slow down or other concerted interruption of operations by employees." We perceive nothing elsewhere in the Act warranting a departure from this unambiguous language. We find, therefore, that the withdrawal of the services of Moller alone from the Lo Sasso projects did not constitute a strike.\*

As stated above, no exceptions were filed to the Trial Examiner's failure to find that the Respondents, by causing Moller to cease work, induced or encouraged any other employees to do likewise. Accordingly, we do not feel called upon to pass on this point. We shall therefore dismiss the complaint with respect to the Lo Sasso operations.

### ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondents, Denver Building and Construction Trades Council, International Brotherhood of Electrical Workers of America, AFL, Local 68, and United Association of Journeymen Pipe Fitters and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL, Local 3, and their agents, shall:

1. Cease and desist from engaging in, or inducing or encouraging the employees of Doose & Lintner or any other employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services, where an object thereof is to force or require Doose & Lintner Construction Company or any other employer or other person to cease doing business with Gould & Preisner.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

\* See *Matter of Griffin Wheel Co.*, 80 N. L. R. B., No. 230, in which the Board reaffirmed its frequently stated view that concerted activities for the purpose of collective bargaining within the meaning of Section 7 logically presuppose the presence of more than one employee in the bargaining unit.

669 (a) Post at their respective Denver, Colorado, business offices copies of the notice attached hereto as an Appendix.\* Copies of said notice, to be furnished by the Regional Director for the Seventeenth Region, shall, after being duly signed by a representative of each Respondent, be posted by said Respondent immediately upon receipt thereof and maintained for a period of sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by said Respondents to insure that the notices are not altered, defaced, or covered by any other material;

(b) Notify the Regional Director for the Seventeenth Region in writing, within ten (10) days from the date of this Order, what steps the Respondents have taken to comply herewith.

AND IT IS FURTHER ORDERED that the complaint, insofar as it alleges that the Respondents otherwise violated Section 8 (b) (4) (A) of the Act, be, and it hereby is, dismissed.

Signed at Washington, D. C., this 13th day of April 1949.

PAUL M. HERZOG,  
Chairman.

JOHN M. HOUSTON,  
Member.

JAMES J. REYNOLDS, JR.,  
Member.

ABE MURDOCK,  
Member.

J. COPELAND GRAY,  
Member.

NATIONAL LABOR RELATIONS BOARD.

(SEAL)

\* In the event that this Order is enforced by decree of a United States Court of Appeals, there shall be inserted before the words "A DECISION AND ORDER" the words "DECREE OF THE UNITED STATES COURT OF APPEALS ENFORCING."

**Appendix.****Notice.**

To all Members of Denver Building and Construction Trades Council; International Brotherhood of Electrical Workers of America, AFL, Local 68; and United Association of Journeymen Pipe Fitters and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL, Local 3

**PURSUANT TO****A DECISION AND ORDER**

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our members that:

WE WILL NOT engage in, or induce or encourage the employees of Doose & Lintner or any other employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services, where an object thereof is to force or require Doose & Lintner Construction Company or any other em-



ployer or other person to cease doing business with  
Gould & Preisner.

Denver Building and Construction Trades Council  
By .....

Title of Officer

International Brotherhood of Electrical Workers  
of America, AFL, Local 68  
By .....

Title of Officer \

United Association of Journeymen Pipe Fitters  
and Apprentices of the Plumbing and Pipefitting  
Industry of the United States and Canada, AFL,  
Local 3  
By .....

Title of Officer

Dated .....

This notice must remain posted for 60 days from the date  
hereof, and must not be altered, defaced, or covered by  
any other material.

• • • • •

Wednesday, February 15, 1950

No. 10271, January Term, 1950

DENVER BUILDING AND CONSTRUCTION TRADES COUNCIL, ET AL.,  
PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

Before HONORABLE HENRY W. EDGERTON, BENNETT CHAMP CLARK,  
and CHARLES FAHY, Circuit Judges;

Argument commenced by Mr. William E. Leahy for petitioners,  
continued by Mr. Winthrop A. Johns for respondent, and concluded  
by Mr. Leahy.

United States Court of Appeals for the District of Columbia  
Circuit. Filed Sept. 1, 1950. Joseph W. Stewart, Clerk.

United States Court of Appeals for the District of Columbia Circuit

No. 10271

DENVER BUILDING AND CONSTRUCTION TRADES COUNCIL; INTERNA-  
TIONAL BROTHERHOOD OF ELECTRICAL WORKERS, A. F. OF L., LOCAL  
68, ET AL., PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

On Petition for Review and on Petition for Enforcement of an Order  
of National Labor Relations Board

Argued February 15, 1950

Decided September 1, 1950

Mr. William E. Leahy, with whom Messrs. Louis Sherman and  
Martin F. O'Donoghue were on the brief for petitioners.

Mr. Winthrop A. Johns, Assistant General Counsel, with whom  
Messrs. A. Norman Somers, Assistant General Counsel, and Domi-  
nick L. Manoli, attorney, all of the National Labor Relations Board,  
were on the brief, for respondent.

Before EDGERTON, CLARK and FAHY, Circuit Judges.

FAHY, Circuit Judge: The Denver Building and Construction  
Trades Council, referred to as the Council, the International Broth-

erhood of Electrical Workers, A. F. L. Local 68, referred to as the I. B. E. W., and the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, A. F. L. Local 3, petition this court to set aside an order of the National Labor Relations Board. The Board answers and requests enforcement of its order.

In essence the order requires petitioners to cease and desist from engaging in or inducing or encouraging the employees of a contractor, known as Doose & Lintner Construction Co., to engage in a strike with an object of forcing it "to cease doing business with" an electrical concern known as Gould & Preisner.

The contractor, Doose & Lintner, was constructing a commercial building on Bannock Street in Denver. Gould & Preisner were subcontractors for some electrical work and supplies. Their employees were non-union. All other employees on the job including those of other subcontractors as well as of the contractor, were members of craft unions affiliated with the petitioning Council. A representative of the I. B. E. W. complained to the electrical subcontractor about non-union men working on the job and reported to the business representative of the Council that the contractor was using the services of this subcontractor. The Council decided to place a picket stating that the Bannock Street job was unfair to the Council. After advising members of the contracting and of the electrical subcontracting firms that union men could not work on the job with non-union men and if the subcontractor worked there the Council would have to picket the job as "unfair", picketing in fact began with a placard reading "This Job Unfair to Denver Building and Construction Trades Council". During the period of picketing, from January 9 through January 22, 1948, no union members worked on the project.

The Board held that petitioners had engaged in an unfair labor practice violative of § 8(b) (4) (A) of the Labor Management Relations Act of 1947, (29 U. S. C. § 158(b) (4) (A) (Supp. 1950)), the pertinent part of which, with its immediate context, is set forth in the margin.<sup>1</sup>

<sup>1</sup> "Sec. 8 \* \* \*

(b) It shall be an unfair labor practice for a labor organization or its agents—

"(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike \* \* \* where an object thereof is: (A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person; \* \* \*"



### I. Jurisdiction

We consider first the question of the Board's jurisdiction under the Commerce Clause, strongly contested by petitioners. The Board's authority extends to unfair labor practices "affecting commerce", that is, "in commerce, or burdening or obstructing commerce or the free flow of commerce" (29 U. S. C § 152(7) (Supp. 1950)). Commerce is defined as interstate and foreign commerce (*Id.* § 152(6)).

The alleged unfair practice was not in commerce itself as defined in the Act. There is no evidence or definite finding of any interstate or foreign commerce at the Bannock Street location. The only interstate commerce involved even indirectly, so far as the evidence or findings enlighten us, is the annual purchase by the electrical subcontractor of approximately \$56,000 of goods which move to its place of business in Denver from out of the State. As to the Bannock Street building itself the finding is that \$348.55 of the subcontractor's materials were used there prior to termination of its services as a result of the picketing and consequent strike. There is no evidence that any of this material actually came from without the State, but it was assumed by the Board that since 65% of all the purchases of Gould & Preisner were so derived a like percentage of the materials used on the Bannock Street job had a like derivation. The report of the trial examiner, adopted in this respect by the Board, found that "any widespread application of such practices might well result in substantially decreasing the inflow of materials" from points outside Colorado; that "Gould & Preisner's annual inflow of over \$55,000 worth of materials is not negligible. Such an inflow is sufficient to establish the Board's jurisdiction".

We do not disturb the assertion of jurisdiction by the Board though the decision in this regard is a close one. The stated basis of jurisdiction would rest firmly enough upon the principles of decided cases under the Labor Act had the events in question occurred at the premises of Gould & Preisner. There the incoming interstate movement of goods would be obstructed or threatened with obstruction by the relationship of the forbidden practices to industrial strife. The holding in *Labor Board v. Fainblatt*, 306 U. S. 601, 607 (1938), that "we can perceive no basis for inferring any intention of Congress to make the operation of the Act depend on any particular volume of commerce affected more than that to which courts would apply the maxim *de minimis*" is more than broad enough to bring within the coverage of the Act, so far as quantity is concerned, the interstate purchases of Gould & Preisner. The fact that their movement was from out of the State into Colorado, rather than the reverse, would not change the result. The impact of industrial strife on interstate commerce at its destination, as well as at its origin, is sufficiently close to meet the requirements of the statute and the Commerce Clause. *International*

*Brotherhood of Electrical Workers v. Labor Board*, 181 F. 2d 34 (2nd Cir. 1950). See, also, *United States v. Wrightwood Dairy Co.*, 315 U. S. 110, 121 (1941); *United States v. Sullivan*, 332 U. S. 689, 698 (1947) [regulation of branding of articles that have completed interstate shipment and are being held for local sale]; *Labor Board v. J. L. Hudson Co.*, 135 F. 2d 380 (6th Cir. 1943), *cert. den.*, 320 U. S. 740; *J. L. Brandeis & Sons v. Labor Board*, 142 F. 2d 977 (8th Cir. 1944), *cert. den.*, 323 U. S. 751; *Labor Board v. Mgy Department Stores*, 146 F. 2d 66 (8th Cir. 1944), modified in other part, 326 U. S. 376 [unfair labor practice in department store purchasing large amounts of stock in interstate commerce]; *Labor Board v. Van de Kamp's Holland Dutch Bakers*, 152 F. 2d 818 (9th Cir. 1946). Here, however, the immediate impact of the controversy was not the place of business of Gould & Preisner but the Bannock Street location. None of the cases heretofore decided by the Supreme Court under the Labor Act presents a similar jurisdictional situation. In each, as illustrated by the *Fainblatt* case, the unfair labor practice occurred at a place of business where interstate commerce was engaged in though the effect of the forbidden practice was felt first on a local activity such as production or manufacturing. In some of the recent cases decided by the courts of appeals involving the building construction business the impact has also been immediate in point of location. Thus in *International Brotherhood of Electrical Workers v. Labor Board*, 181 F. 2d 34 (2nd Cir. 1950), interstate commerce moved directly to the site of the job where the picketing occurred. so also in *Shore v. Building & Construction Trades Council*, 173 F. 2d 678 (3d Cir. 1949), an injunction action under section 10(1) (29 U.S.C. § 160(1) (Supp. 1950)). On the other hand, in *United Brotherhood of Carpenters, etc. v. Sperry*, 170 F. 2d 863 (10th Cir. 1948); *Labor Board v. Local 74, United Brotherhood of Carpenters, etc.*, 181 F. 2d 126 (6th Cir. 1950), and *Slater v. Denver Building and Construction Trades Council*, 175 F. 2d 608 (10th Cir. 1949), as in the case at bar, there was a definite break in the route of the material. In each of the cases last cited the material whose origin was interstate had come to rest locally at the place of business of the boycotted concern before moving locally to the building site where the industrial strife occurred. Jurisdiction was sustained on the theory that the boycotted concern received substantial quantities of goods from out of the State and this interstate business would be adversely affected. In *Groneman v. International Brotherhood of Electrical Workers*, 177 F. 2d 995 (10th Cir. 1949), however, jurisdiction of the district court under § 303(b) of the Act (29 U.S.C. § 187(b) (Supp. 1950)) was held to be lacking in such circumstances.

Of course the fact that the activity at Bannock Street was itself local is no bar to jurisdiction. Numerous Labor Board cases, includ-

ing the leading decisions of *Labor Board v. Jones & Laughlin*, 301 U. S. 1 (1936), and companion cases, as well as other decisions before and after, under other exercises by Congress of the commerce power, including *Wickard v. Filburn*, 317 U. S. 111 (1942) leave no doubt as to this. It may be noted, however, that the basic principle underlying *Wickard v. Filburn* is not applicable to the present case. There Congress found that in order properly to regulate the interstate market in wheat it was essential to regulate the use of wheat on the farm, including its consumption there. This was a regulation by Congress of a particular local aspect of the whole of a particular commodity in order to control and protect its interstate aspects. The principle is comparable to that expounded in the rate cases (see *Shreveport* case, 234 U. S. 342, 351-3 (1913)). In the Labor Act, however, no finding was made by Congress that all unfair labor practices affect commerce (see *Labor Board v. Jones & Laughlin*, *supra*, at page 31); the required effect must be shown in each case (*Id.*, page 32).

In the case at bar, as stated, the interstate commerce relied upon as a basis for jurisdiction ended at the warehouse and offices of the electrical subcontractor and did not extend to the location where the unfair labor practices occurred.<sup>2</sup> We note, however, that in addition to the Bannock Street project another job in Denver known as the Lo Sasso project was the subject of controversy affecting Gould & Preisner. While the Board found no unfair labor practice at that place the facts regarding the material used there are relevant to the jurisdictional question. It too was a small job, comparable to Bannock Street, insofar as the electrical work of Gould & Preisner was concerned. But the circumstance that two controversies affecting the same concern at or about the same time appear in the same record illustrates the recurrent character of the problem. Such stoppages in the work of this concern would in a practical and economic sense adversely affect its total business, including its out-of-state purchases. While the actual goods involved at the two sites are not satisfactorily shown to have derived from interstate commerce, the threatened or actual stoppage of work on these and similar projects reasonably should be held to affect significantly the total business of the concern, a substantial part of which is interstate. The closeness of the case on the record before us is due in part no doubt to the absence of evidence as to all that could have been proved, such as the origin of the goods used at the Bannock Street job as a whole, not alone those used there by Gould & Preisner, and the absence also of

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<sup>2</sup> Even on the assumption of the trial examiner, apparently approved by the Board, that 65% of its total purchases were interstate and therefore that 65% of the \$348.55 of materials used on the Bannock Street job were of like origin, this material was no longer in interstate commerce.



clearer proof of the source of materials used by Gould & Preisner at the Bannock Street and Lo Sasso sites. Nevertheless we think jurisdiction should not be denied. "Appropriate for judgment is the fact that the immediate situation is representative of many others throughout the country, the total incidence of which if left unchecked may well become far-reaching in its harm to commerce. *Labor Board v. Fainblatt, supra*, at 607-608". *Polish National Alliance v. Labor Board*, 322 U. S. 643, 648 (1943). It is quite true that in the *Polish National Alliance* case the interstate commerce involved was extensive, but the considerations referred to have present pertinence. The reference to the *Fainblatt* opinion is no doubt to the statement there made,

"There are not a few industries in the United States which, though conducted by relatively small units, contribute in the aggregate a vast volume of interstate commerce: \* \* \*" (306 U.S. at p. 607)

See, also, *Wickard v. Filburn, supra*, at page 124, where it is said:

"\* \* \* Once an economic measure of the reach of the power granted to Congress in the Commerce Clause is accepted, questions of federal power cannot be decided simply by finding the activity in question to be 'production,' nor can consideration of its economic effects be foreclosed by calling them 'indirect.' \* \* \*"

On this record, while indirect, the economic effect is there and justifies the assertion of jurisdiction from a constitutional standpoint. Though in our view of the evidence and findings the case is on the jurisdictional borderline we think the line has not been crossed.

## II. The Question of *Res Judicata*.

The petitioners contend that the question of jurisdiction has been judicially determined adversely to the Board in a manner which precludes its reconsideration. The Board through its Regional Director petitioned the District Court of the United States for the District of Colorado under § 10 (1) of the Act (29 U. S. C. § 160 (1) (Supp. 1950)), set forth in the margin,<sup>3</sup> to enjoin the questioned conduct

<sup>3</sup> "Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (A), (B), or (C) of section 8(b), the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on

pending final adjudication of the matter by the Board. The court held the matters involved were purely local and did not affect commerce within the meaning of the Act. Appeal was taken to the court of appeals and dismissed by the Board with that court's consent. It is said the doctrine *res judicata* bars the assertion of jurisdiction by the Board in these proceedings subsequently initiated. The scheme of the statute requires us to reject this view.

Proceedings in the District Court and those before the Board are independent. The Board's action now under review is on a record made before its trial examiner and brought before the Board for decision in accordance with the authority set forth in § 10 of the statute. The Board is empowered there to prevent unfair labor practices, and "This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise" (*ibid*). We do not think action of the District Court under § 10(1) is intended to interfere with the dominant authority of the Board and courts of appeals in the formulation of orders under § 10 (a) and (b) and in their enforcement under § 10 (e) and (f). Resort to the District Court under § 10 (1) is only for "appropriate injunctive relief pending the final adjudication of the Board \* \* \*." The Board's authority is not limited, expressly or by implication, to cases in which an injunction under this section is sought on its behalf or, when sought, is granted. Since two remedies are provided in the statute for the purpose of accomplishing two separate though related purposes of Congress, one in the District Court of a preliminary or interlocutory character, the other before the Board and reviewing courts, of a final character, the separate means designed by Congress for the accomplishment of these purposes must not be permitted to impair the freedom and effectiveness of either. In the one case the Board through the regional attorney or other officer is a litigant seeking an interlocutory injunction against the continuance of an alleged unfair labor practice pending final adjudication by the Board. In the other the Board is itself the initial tribunal which makes a final decision subject to review and correction by an appropriate court of appeals or by the Supreme

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behalf of the Board, petition any district court of the United States (including the District Court of the United States for the District of Columbia) within any district where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein such person resides or transacts business, for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law: \* \* \*

Court. §§ 10(a), (b), (e), (f). Review and determination by the judiciary of the jurisdictional question arising under the Commerce Clause is available; but a final and binding determination in that regard may not be compelled until an initial decision has been made by the Board on the record before it, unless perchance the Board abandons the procedures available to it under §§ 10 (a), (b) and (f), and pursues only those set forth in § 10 (l).

This statutory scheme distinguishes the case from *Sunshine Coal Co. v. Adkins*, 310 U. S. 381 (1939), and *Otis & Co. v. Securities and Exchange Commission*, — U. S. App. D. C. —, 176 F. 2d 34 (1949).<sup>3a</sup> In these cases there was no comparable structure erected by Congress for two independent proceedings. Where the application of the judicial doctrine *res judicata* would be inconsistent with the method devised by Congress the doctrine will not be enforced by the courts. *Kalb v. Feuerstein*, 308 U. S. 433, 444 (1939). It is for this reason we hold against the contention of petitioners; and not because of lack of any of the elements which usually make out a case for the application of *res judicata*. The doctrine is not to be used where the circumstances create a semblance of conditions for its application but to apply it would submerge the plan of Congress for the administration and enforcement of its policy.

### III. The Unfair Labor Practice

A. In order to treat adequately this aspect of the case at this point some repetition of facts is indulged. A summary of the findings of the trial examiner, adopted by the Board, is that the principal contractor, Doose & Lintner, entered into arrangements with Gould & Preisner for the latter to do certain electrical work, including the furnishing of materials, on the Bannock Street job. Other sub-contractors were also engaged for brickwork, cement and steel work; and plumbing. The electricians employed by Gould & Preisner were non-union but all men employed directly by Doose & Lintner and all employees of subcontractors other than Gould & Preisner were members of unions affiliated with the Council. Lintner was advised by a representative of the Council "that he would have to 'notify his members' by picketing that non-union men were working on the job. \* \* \* if Gould & Preisner worked on the job they would have to put a picket on it to notify their members that the job was unfair". It was "too big a job" for the unions to permit non-union electricians to work on it".<sup>4</sup> The picket carried a placard, "This Job Unfair to

<sup>3a</sup> The *Otis* case was reversed by the Supreme Court, 338 U. S. 843 (1949) because of failure to exhaust administrative remedies. The *res judicata* question was not reached by the Supreme Court.

<sup>4</sup> The quoted excerpts are from the Findings of Fact of the trial examiner, adopted by the Board.



Denver Building and Construction Trades Council". As a result all employees except the non-union electricians of Gould & Preisner quit work for about two weeks. At the end of that time, and before Gould & Preisner had finished their subcontract, a letter was sent to them advising that their services were terminated since "It now appears . . . that your employees are unable to perform services while the employees of other subcontractors are working on the premises". All union labor was thereupon employed, the picket was removed and the job was completed. Just prior to the picketing, and while Gould & Preisner were still working, the contractor, in anticipation of the picketing, took his union carpenters to another job upon which all the men were members of unions affiliated with the Council. These carpenters and other employees continued their work there during the picketing of the Bannock Street project even though the non-union employees of Gould & Preisner were then working at the latter place.

From the foregoing it appears that the picketing was due to the fact that non-union labor was employed on the same job with the union men affiliated with the Council.

B. Section 8 (b) (4) (A) makes it an unfair labor practice for a labor organization to engage in a strike where an object thereof is to force or require any employer "to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person". The Board adopted the conclusion of the trial examiner that the agents of the petitioners were engaged in an enterprise "of which an object was forcing . . . Doose & Lintner to cease doing business with Gould & Preisner". Petitioners contend that the action taken was primary and not secondary and therefore was outside the invoked statutory provisions designed to prevent secondary boycotts and secondary strikes.

It is quite true we think that the provisions of § 8 (b) (4) (A) here involved are directed against secondary boycotts and secondary strikes. The words "cease doing business with any other person" must be read with this in mind and interpreted in their setting. Not every strike which might be construed to have as an object the forcing of someone to "cease doing business" with someone else is prohibited. *Douds v. Metropolitan Federation of Architects, etc.* 75 F. Supp. 672, 675 (S. D. N. Y. 1948); *United Electrical, Radio and Machine Workers, etc. and Ryan Construction Corporation*, 85 N. L. R. B. No. 76 (July 29, 1949); *Oil Workers International Union and the Pure Oil Company*, 84 N. L. R. B. 315 (1949). But cf., *contra*, *International Rice Mills v. Labor Board*, June 21, 1950 (5th Cir.),

The clause must be read with the provision preserving the right to strike except as specifically provided otherwise:

"Nothing in this Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right." Section 13 (29 U.S.C. § 163 (Supp. 1950)).

The history of the statute aids to give meaning to the words. Senator Taft, co-author of the Bill and its manager on the floor of the Senate, explained that § 8 (b) (4) (A) was to make a secondary boycott an unfair labor practice.<sup>5</sup> The Conference Report is to like effect.<sup>6</sup> The Senate Committee on Labor and Public Welfare (Senate Report No. 105, 80th Cong., 1st Sess. page 3) likewise shows this intent and purpose.<sup>7</sup>

<sup>5</sup> "The fourth unfair labor practice is an extremely important one. It is made an unfair labor practice for any union to engage in a secondary boycott." 93 Cong. Rec. 3838 (1947)

Later he also said:

"This provision makes it unlawful to resort to a secondary boycott to injure the business of a third party who is wholly unconcerned in the disagreement between an employer and his employees. . . . All this provision of the bill does is to reverse the effect of the law as to secondary boycotts. It has been set forth that there are good secondary boycotts and bad secondary boycotts. Our committee heard evidence for weeks and never succeeded in having anyone tell us any difference between different kinds of secondary boycotts. So we have so broadened the provision dealing with secondary boycotts as to make them an unfair labor practice." 93 Cong. Rec. 4198 (1947)

<sup>6</sup> "Under clause (A) strikes or boycotts, or attempts to induce or encourage such action, were made unfair labor practices if the purpose was to force an employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of another, or to cease doing business with any other person. Thus it was made an unfair labor practice for a union to engage in a strike against employer A for the purpose of forcing that employer to cease doing business with employer B. Similarly it would not be lawful for a union to boycott employer A if he uses or otherwise deals in the goods of or does business with employer B." House Report No. 510, 80th Cong., 1st Sess., p. 43.

<sup>7</sup> "The major changes which the bill would make in the National Labor Relations Act may be summarized as follows: . . .

"3. It gives employers and individual employees rights to invoke

In other cases the Board has adopted the meaning ascribed to the provision by Senator Taft:

" \* \* \* Section 8 (b) (4) (A) was not intended by Congress, as the legislative history makes abundantly clear, to curb primary picketing. It was intended only to outlaw certain *secondary* boycotts, whereby unions sought to enlarge the economic battleground beyond the premises of the primary Employer. When picketing is wholly at the premises of the employer with whom the union is engaged in a labor dispute, it cannot be called 'secondary' even though, as is virtually always the case, an object of the picketing is to dissuade all persons from entering such premises for business reasons. \* \* \* " *United Electrical, Radio and Machine Workers, etc. and Ryan Construction Corporation, supra.*

In *Oil Workers International Union, etc. and Pure Oil Company, supra*, the Board said:

" \* \* \* any accompanying picketing of the employer's premises is necessarily designed to induce and encourage third persons to cease doing business with the picketed employer. It does not follow, however, that such picketing is therefore proscribed by Section 8 (b) (4) (A) of the Act.

"It is clear from the legislative history of the Act that Section 8 (b) (4) (A) was aimed at *secondary* and not primary action.

\* \* \*

" \* \* \* The fact that the Union's primary pressure on Standard Oil may have also had a secondary effect, namely inducing and encouraging employees of other employers to cease doing business on Standard Oil premises, does not, in our opinion,

---

the processes of the Board against unions which engaged in certain enumerated unfair labor practices, including secondary boycotts and jurisdictional strikes, which may result in the Board itself applying for restraining orders in certain cases."

Page 22 of the report goes on to say:

"Under paragraph (A) strikes or boycotts, or attempts to induce or encourage such action, are made violations of the act if the purpose is to force an employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of another, or to cease doing business with any other person. Thus, it would not be lawful for a union to engage in a strike against employer A for the purpose of forcing that employer to cease doing business with employer B; nor would it be lawful for a union to boycott employer A because employer A uses or otherwise deals in the goods of or does business with employer B (with whom the union has a dispute). \* \* \*



convert lawful primary action into unlawful secondary action within the meaning of Section 8 (b) (4) (A). To hold otherwise might well outlaw virtually every effective strike, for a consequence of all strikes is some interference with business relationships between the struck employer and others."

The courts have uniformly construed the provision as aimed at secondary action. Thus, in *Printing Specialties and Paper Converters Union v. Le Baron*, 171 F. 2d 331, 334 (9th Cir. 1948), the court said:

" \* \* \* Congress has now undertaken, in the exercise of its power under the Commerce Clause, art. 1, § 8, cl. 3, to prohibit altogether or sharply to curtail the use by labor organizations of certain economic weapons which they have heretofore freely employed. In an effort to narrow the area of industrial strife, and thus to safeguard the national interest in the free flow of commerce, it has in effect banned picketing when utilized to conscript in a given struggle the employees of an employer who is not himself a party to the dispute. Such we understand to be the purport of § 8 (b) (4) (A) of the Act."

See, also, *International Brotherhood of Electrical Workers v. Labor Board*, 181 F. 2d 34, 35 (2nd Cir. 1950), where Judge Learned Hand said for the court:

" \* \* \* The appeal presents two questions: \* \* \* (2) whether the evidence before the Board supported its finding that the 'local' had engaged in conduct which constituted a secondary boycott, forbidden by the Act. \* \* \*"

The context of the words "cease doing business" and the meaning attributed to them by the legislative history of the Act, by the Board and by the courts, require that they be construed as condemning as an unfair labor practice a secondary boycott or strike but not primary action even when an object in a limited sense may be construed to be to force or require an employer to cease doing business with another. The effective sense must be that of the statute. We realize that when a statute is sufficiently broad in terms to cover a situation it will ordinarily be construed to do so even though other and different situations were in the mind of Congress at the time of enactment.

\* In that case the court, as elaborated upon *infra*, in circumstances somewhat comparable to those here involved, held that the picketing was secondary and therefore prohibited. See, also, to like effect *United Brotherhood of Carpenters, etc. v. Sperry*, 170 F. 2d 863 (10th Cir. 1948).

Nevertheless the scope of a statute must still be interpreted so as to carry out the intent of Congress. See *Apex Hosiery Co. v. Leader*, 310 U. S. 469, 489 (1939). Since it is clear the "cease doing business" clause, when read with the clause preserving the right to strike except as specifically provided, is not to be literally construed, its bounds must be sought. The history of the clause before, during and since enactment, in Congress, before the Board and in the courts, places primary labor action outside those bounds.

C. The final problem, therefore, is to determine whether the action here was of a secondary or primary character. If the former the Board properly ordered its cessation. If the latter its order should not be approved. The usual secondary boycott or strike is against one who is not a party to the original dispute. It is designed to cause a neutral to cease doing business with, or to bring pressure upon, the one with whom labor has the dispute. It seeks to enlist this outside influence to force an employer to make peace with the employees or labor organization contesting with him. See the Conference Report, *supra*, footnote 6. The situation before us is not of this character. The picketing and resulting strike were at the premises of the contractor where the subcontractor's men were at work. It grew out of a controversy over the conduct of the contractor in participating in the bringing of the non-union men onto the job as well as over the conduct of the electrical subcontractor in employing them. The purpose of the Council was to render the particular job all union. It was not to require Gould & Preisner to unionize their shop located elsewhere or to bring pressure against Doose & Lintner at any other place because of the employment of Gould & Preisner at Bannock Street. Accordingly the object was not in any literal sense to require Doose & Lintner to cease doing business with Gould & Preisner. The pressure was limited to the one job, which was picketed as a whole to make it wholly union and in protest against the employment there of the non-union electricians.

It is of some help to contrast this case with, for example, *Labor Board v. Wine, Liquor and Distillery Workers, etc.*, 178 F. 2d 584 (2nd Cir. 1949); *United Brotherhood of Carpenters etc. v. Sperry*, *supra*; *Printing Specialties and Paper Converters Union v. LeBaron*, *supra*, and *Slater v. Denver Building and Construction Trades Council*, 175 F. 2d 608 (10th Cir. 1949). In all these cases where an unfair labor practice was held to have occurred the object was to bring pressure on the employer with whom the union had its dispute by the "conscripting of innocent neutrals", an activity § 8 (b) (4) (A) is devised to prevent. In each case the location of the strike was entirely separate from that of the concern against which the ultimate pressure was sought to be directed. The action of the employees was not against the job where the non-union men were

employed, as in the case at bar. In none of the following district court cases as well was the alleged unfair labor practice at the premises where the conditions complained of arose: *Styles v. Local 760*, etc., 80 F. Supp. 119 (E. D. Tenn. 1948); *Cranefield v. Bricklayers*, etc., 78 F. Supp. 611 (W. D. Mich. 1948); *Brown v. Oil Workers International Union*, 80 F. Supp. 708 (N. D. Calif. 1948); *Douds v. Confectionery & Tobacco Jobbers Employees Union*, 85 F. Supp. 191 (S.D. N.Y. 1949). Compare, however, *Shore v. Building & Construction Trades Council*, *supra*; *Labor Board v. Local 74, United Brotherhood of Carpenters*, etc., *supra*, and *International Brotherhood of Electrical Workers v. Labor Board*, 181 F. 2d 34 (2d Cir. 1950). In the latter a divided court held that picketing the carpenters on a house-construction job in an effort to force them to force the contractor to get rid of a non-union electrical subcontractor was prohibited secondary action under § 8 (b) (4) (A). The placard of the picket read: "This job is unfair to organized labor". The case is not unlike the present; but in reaching its conclusion the majority treated the carpenters and the principal contractor, on the latter of whom the pressure was exerted through the carpenters, as third party neutrals, who had no concern in the dispute with the electrical subcontractor. Judge Clark could not accept this separation of the parties. In his dissent he said in part:

"\* \* \* The doctrine of enmeshed employment, applied by the Board and distinguished away in the opinion, presents perhaps the greatest anomaly of all. Thus picketing directed against a main employer remains still primary even though it may include special picketing directed intentionally against a subcontractor on the ground of the main employer. *Ryan Construction Corp.*, 85 N.L.R.B. No. 76; *Pure Oil Company*, 84 N.L.R.B. No. 38. If these cases are sound—and it is believed they are within the intent and purpose of the Act—then it would seem that at least equally picketing against a subcontractor which reaches the main contractor as a part thereof would be permissible. And *a fortiori* should this be so the more closely the main contractor can be held a causative factor in the non-union employer's activities. \* \* \*" (181 F. 2d at 41)

The trial examiner of the Board, following a lengthy discussion of the subject, in *Denver Building and Construction Trades Council and William G. Churches*, 90 N.L.R.B. No. 66 (June 22, 1950), held action like that here involved to be primary and therefore not within § 8 (b) (4) (A). The Board declined to assume jurisdiction in the case and therefore did not pass upon the unfair labor practice. To the contrary is the report in *United Association of Journeymen etc. and Pettus-Banister Co.*, 90 N.L.R.B. No. 80 (June 24, 1950),



in which the Board also declined jurisdiction because of the essentially local character of the business done.

In *Doubs v. Metropolitan Federation of Architects, etc., supra*, there was a strike against an engineering firm called Ebasco. After the strike began, Ebasco transferred a large part of its remaining work and employees to another engineering firm called Project, which had previously done subcontracting work for Ebasco. Project was thereupon picketed. Holding the picketing not to be secondary action, the court said the term "doing business" was to be read "with the aid of the glossary provided by the law of secondary boycott", continuing:

"\* \* \* To suggest that Project had no interest in the dispute between Ebasco and its employees is to look at the form and remain blind to substance. In every meaningful sense it had made itself party to the contest. Manifestly it was not an innocent bystander, nor a neutral. It was firmly allied to Ebasco and it was its conduct as ally of Ebasco which directly provoked the union's action.

\* \* \*

"\* \* \* In encouraging a strike at Project the union was not extending its activity to a front remote from the immediate dispute but to one intimately and indeed inextricably united to it. See *Bakery Drivers Local v. Wohl*, 1942, 315 U. S. 769, 62 S. Ct. 816, 86 L. Ed. 1178; cf. *Carpenters Union v. Ritter's Cafe*, 1942, 315 U. S. 722, 62 S. Ct. 807, 86 L. Ed. 1143." (75 F. Supp. at 676, 677)

That was a clearer case of primary action than the one with which we are concerned; but the reasoning is here applicable. Doose & Lintner was not neutral. It brought Gould & Preisner with the non-union labor onto the job. This brought the Council and Doose & Lintner into direct controversy. The picketing was designed to change the situation by bringing about the employment only of union labor on the Bannock Street job. There was no geographical separation at that location between Doose & Lintner and Gould & Preisner. Only by ceasing to work for Doose & Lintner could petitioners' members avoid working with Gould & Preisner's non-union men. Petitioners did not say to Doose & Lintner, in effect, "We will not work for you if you do business with Gould & Preisner". They said, in effect, "we will not work with non-union men, and therefore we will not work for you at the place to which you bring Gould & Preisner with non-union men". We think this action of petitioners was of a primary character even if peti-

tioners envisaged it might result in a cessation of work on the particular job by Gould & Preisner. (See *United Electrical, Radio and Machine Workers, etc.*, and *Ryan Construction Corporation*, and *Oil Workers International Union and The Pure Oil Company, supra.*) Clearer language than that of § 8 (b) (4) (A) would be needed to take the conduct outside the provisions of § 13 that nothing in the Act shall be construed to interfere with the right to strike "except as specifically provided for herein". We do not read the Act as specifically providing against a strike based upon labor conditions at the struck premises brought about by the activities of the principal contractor as well as of the subcontractor. If the picketing was directed against Gould & Preisner it was primary, as to it. Its effect on others at the job would not change its character. If it was aimed at Doose & Lintner through the employees of other subcontractors or through their own employees it was aimed at conditions at the site of the picketing for which that firm was at least in part responsible. This also would be primary action. We think in fact the picketing must be considered as against both Doose & Lintner and Gould & Preisner—inseparably; and that its object was to bring the job to a standstill until the non-union electricians were replaced. The job was said to be "unfair". The contractor cannot separate itself from the conditions there so as to make the action by the Council against it secondary; nor can the subcontractor.

"\* \* \* In view of the Congressional History of the Act, and the debates in the Senate, it would seem that the relationship between a principal and a subcontractor arising out of the awarding of a subcontract would not within the meaning of the Act be 'doing business' as between the parties. If that were true, it could easily result in a subterfuge and would enable a principal contractor, whose relations with labor and with employees were unfavorable, to hide behind a more favorable relationship of a sub-contractor. \* \* \*" - *Mills v. United Association of Journeymen and Apprentices of Plumbing etc.*, 83 F. Supp. 240, 245 (W. D. Mo. 1949).

The converse is also true. To require the contractor to cease the interwoven activities that the close relationship between it and the subcontractor involves, leaving it free to buy goods from the subcontractor, sell to it, and employ it in other locations, is not to require the contractor to cease doing business with the subcontractor.

We do not, because the Board did not, pass upon any possible violation of other provisions of the Act. Convinced that the action in the circumstances of this case is primary and not secondary we are obliged to refuse to enforce the order based on § 8 (b) (4) (A).

Other questions raised, in view of the foregoing, are unnecessary to be decided. For the reasons stated the order should be set aside, and

*It is so ordered.*

*CLARK, Circuit Judge, dissenting in part and concurring in part and in the result:*

I regret that I am unable to concur in the able and painstaking opinion of my colleague, Judge Fahy. I do concur in part III and in the result. I find myself completely unable to concur in parts I and II.

I do not believe that on the face of Judge Fahy's excellent statement of the facts, which need not be repeated, any showing whatever appears of interstate commerce in this case. Indeed, quite the contrary appears. It is conceivable that a building operation might be affected in some degree in interstate commerce but this would be most unusual. The operation described by the majority is characteristically an intra-state transaction. Therefore, the National Labor Relations Board had no jurisdiction. Indeed Congress would have no power to confer such jurisdiction.

As to part II, I am of the opinion that the action of the United States District Court in Denver rendered the matter *res judicata*. It was a court of competent jurisdiction—indeed the jurisdiction is expressly conferred by the statute. The issues were identically the same. The action of the court was directly adverse to the contentions of the Board. No appeal was taken.

For these reasons, I cannot concur in parts I and II but I do concur in part III and in the result.



United States Court of Appeals for the District of Columbia Circuit. Filed Sept. 1, 1950. Joseph W. Stewart, Clerk.

United States Court of Appeals for the District of Columbia Circuit

No. 10,271

April Term, 1950

DENVER BUILDING AND CONSTRUCTION TRADES COUNCIL, ET AL.,  
PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

No. 30-CC-2

NATIONAL LABOR RELATIONS BOARD

On Petition for Review and on Petition for Enforcement of an Order of National Labor Relations Board.

Before: EDGERTON, CLARK and FAHY, Circuit Judges.

DECREE

This cause came on to be heard on the transcript of record from the National Labor Relations Board, and was argued by counsel.

On consideration whereof, It is ordered and decreed by this Court that the order of the National Labor Relations Board on review and sought to be enforced in this cause be, and it is hereby, set aside.

Per Circuit Judge FAHY.

Dated: September 1, 1950.

Separate opinion by Circuit Judge Clark dissenting in part and concurring in part and in the result.

United States Court of Appeals for the District of Columbia  
Circuit. Filed Sept. 18, 1950. Joseph W. Stewart, Clerk.

In the United States Court of Appeals for the District of Columbia  
Circuit

No. 10,271

DENVER BUILDING AND CONSTRUCTION TRADES COUNCIL, APPELLANT

v.

NATIONAL LABOR RELATIONS BOARD, APPELLEE

### DESIGNATION OF RECORD

The Clerk will please prepare a certified transcript of record for use on petition for writ of certiorari to the Supreme Court of the United States in the above-entitled cause, and include therein the following:

1. Joint appendix.
2. Minute entry of argument.
3. Opinion.
4. Judgment.
5. This designation.
6. Clerk's certificate.

PHILIP B. PERLMAN,  
*Solicitor General,*  
*Counsel for Appellee.*

### CERTIFICATE OF SERVICE

It is hereby certified that service of the foregoing designation of record has been made on counsel for Appellant by mailing copies to them at their business addresses as below indicated:

William E. Leahy, 821 15th St., N.W., Washington, D. C.

Martin F. O'Donoghue, Tower Building, 14th and K Sts., Washington, D. C.

Louis Sherman, 1200 15th St., N.W., Washington, D. C.

PHILIP B. PERLMAN,  
*Solicitor General.*

September 18, 1950.

UNITED STATES COURT OF APPEALS FOR THE DISTRICT  
OF COLUMBIA CIRCUIT

I, Joseph W. Stewart, Clerk of the United States Court of Appeals for the District of Columbia Circuit, hereby certify that the foregoing pages, numbered from 1 to 281, both inclusive, constitute a true copy of the joint appendix to the briefs of the parties, and of the pleadings and proceedings of the said Court of Appeals as designated by counsel in the case of:

DENVER BUILDING AND CONSTRUCTION TRADES COUNCIL, ET AL.,  
PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

No. 10271.....October Term 1950, as the  
same remain upon the files and records of said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this sixteenth day of October, A. D. 1950.

(SEAL).

JOSEPH W. STEWART,  
*Clerk of the United States Court of Appeals  
for the District of Columbia Circuit.*



## Supreme Court of the United States

No. 393, October Term, 1950

*Order allowing certiorari*

Filed December 11, 1950

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted. The case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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Washington, D.C.

# Report of the Committee on the Assassination of President John F. Kennedy

Volume 1: The Assassination of President John F. Kennedy

Executive Summary

The Committee on the Assassination of President John F. Kennedy was established by the President John F. Kennedy Library and the John F. Kennedy Center for the Performing Arts. The Committee's mandate was to conduct a thorough investigation into the assassination of President John F. Kennedy and to report its findings to the public. The Committee's report, published in 1975, is a landmark document in the history of the assassination. It provides a detailed account of the events leading up to the assassination, the assassination itself, and the aftermath. The Committee's findings are based on a comprehensive review of all available evidence, including witness statements, medical records, and forensic evidence. The Committee's report is a testament to the power of a thorough investigation and the importance of transparency in the face of a national tragedy.

1. Introduction

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# **In the Supreme Court of the United States**

**OCTOBER TERM, 1950**

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**No. —**

**NATIONAL LABOR RELATIONS BOARD, PETITIONER**

**v.**

**DENVER BUILDING AND CONSTRUCTION TRADES COUNCIL; INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, A. F. OF L., LOCAL 68; AND UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, A. F. L., LOCAL No. 3**

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**PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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The Solicitor General, on behalf of the National Labor Relations Board, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered on September 1, 1950 (R. 282), denying enforcement of an order issued by the Board against the above-named labor organizations (R. 260-261).

## OPINIONS BELOW

The opinion of the Court of Appeals (R. 265-281) is not yet officially reported. The findings of fact, conclusions of law and order of the National Labor Relations Board (R. 256-263, 211-247) are reported at 82 NLRB 1195.

## JURISDICTION

The judgment of the Court of Appeals was entered on September 1, 1950 (R. 282). The jurisdiction of this Court is invoked under Section 1254 of 28 U. S. C., as codified June 25, 1948, and Section 10 (e) of the National Labor Relations Act, as amended.

## QUESTION PRESENTED

Because a non-union subcontractor and his employees were working there, unions picketed at the situs of a construction project. The picketing was designed to induce employees of the general contractor and other subcontractors to cease work on the project, an object thereof being to force or require the general contractor to cease doing business with the non-union subcontractor on the project. The question presented is whether by such picketing the unions violated Section 8 (b) (4) (A) of the Act.

## STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Supp. III, 141, *et seq.*), are set forth in the Appendix, *infra*, p. 19.

## STATEMENT

Upon the usual proceedings under Section 10 of the amended Act, the Board, on April 13, 1949, issued its findings of fact, conclusions of law and order (R. 256-263, 211-247). Briefly, in pertinent part, the Board found that the respondent labor organizations violated Section 8 (b) (4) (A) of the Act by picketing a building being erected by Doose & Lintner, a general contractor, thereby causing members of local unions affiliated with the respondent Council to cease work on that project, with an object of forcing Doose & Lintner to cease doing business with Gould & Preisner, a non-union subcontractor who was employed on the building project. The Board's subsidiary findings and the supporting evidence may be summarized as follows:<sup>1</sup>

The Denver Building and Construction Trades Council, hereinafter called the Council, is a labor organization composed of delegates from the various local labor unions whose members are engaged in building and construction work in Denver, Colorado, and vicinity. The Council is engaged in representing and protecting the interests of its constituent unions and their members (R. 220; 22, 29). Among the craft unions affiliated with the Council are the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry, Inc., Local No. 3, hereinafter called the

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<sup>1</sup> In the following statement, whenever a semicolon appears, record references preceding the semicolon are to the Board's findings; succeeding references are to the supporting evidence.



Plumbers, and the International Brotherhood of Electrical Workers, A. F. L., Local 68, hereinafter called the Electricians (*ibid.*).

Gould & Preisner is a partnership composed of Earl C. Gould and John C. Preisner (R. 216; 22, 29, 54-55). For approximately 20 years the firm has been engaged in electrical contracting work in connection with residential, commercial and industrial construction projects in Denver, Colorado (*ibid.*). In the course of its operations Gould & Preisner purchases various materials including copper wire, electric metallic tubing, conduits, steel boxes, panels, switches, and plugs. In 1947, the firm purchased raw materials valued at \$86,500 of which approximately 65 percent, or \$55,745, was purchased directly from more than forty firms located outside of the State of Colorado. Of the materials purchased locally in Colorado, practically all were produced outside of Colorado and then resold to Gould & Preisner (R. 216-217; 55-56).

Among the customers of Gould & Preisner are several firms which are engaged in interstate commerce. During 1946 and 1947, for example, Gould & Preisner performed work for such firms ranging in value from \$1,024 to \$7,467 (R. 217; 58-60, 171).

At the time of the hearing before the Board's Trial Examiner in the instant case, Gould & Preisner had 28 employees (R. 216; 55). The firm has operated as a non-union shop (R. 261; 91). As a consequence, it has been involved in a long-stand-

ing labor dispute with the Council and some of its affiliates, particularly the Electricians, and for many years the firm has been listed as "unfair" by the Council (R. 220-221; 132).

In September 1947, Gould & Preisner entered into arrangements with Doose & Lintner, a partnership engaged in the general building construction business in Denver, to perform for a price estimated at \$2,300, certain electrical work, including the furnishing of materials on a commercial building being erected by Doose & Lintner, on Bannock Street in Denver.<sup>2</sup> Doose & Lintner also entered into arrangements with other contractors to perform essential work on that building. Gould & Preisner began work on the Bannock Street building late in October 1947 (R. 227; 60-61). Its employees were the only non-union employees working on the building. The others, including plumbers, laborers and carpenters, employed by Doose & Lintner and various subcontractors engaged on the job were members of unions affiliated with the Council (R. 230-231; 91, 114-115).

In November 1947, and again about a month later, Jack Fisher, an assistant business agent of the Electricians, met Earl Gould, a partner in

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<sup>2</sup> As hereinafter noted, Doose & Lintner terminated the services of Gould & Preisner before completion of the work undertaken by the latter; at the time its services were terminated, Gould & Preisner had spent \$348.55 for materials used by it on the project. The record does not disclose what percentage, if any, of these materials came from out-of-state sources (R. 218; 175).

Gould & Preisner, and after pointing out to him that his firm's employees were the only non-union men working on the Bannock Street job, said that he did not see how it could progress with them working on that job. Gould insisted that they would complete their work pursuant to their contract unless they were "bodily put off." Fisher replied that the situation would be difficult for both Gould & Preisner and Doose & Lintner (R. 228; 63-64).

On January 8, 1948, a representative of the Electricians reported to the Council's business representative, Clifford Gould,<sup>3</sup> that the services of Gould & Preisner were being used by Doose & Lintner on the Bannock Street job. That same day, the Council's Board of Business Agents held a meeting attended by a majority of the business agents of various craft unions affiliated with the Council, including Clyde Williams and Jack Fisher, agents of the Electricians, and Mike McDonough, an agent of the Plumbers. At this meeting it was decided, and business representative Clifford Gould of the Council was instructed, "to place a picket on the Bannock Street job stating that the job was unfair" to the Council. In keeping with the Council's practice, each organization affiliated with it was furnished with a copy of the minutes of that meeting, which noted the decision to picket Doose & Lintner's Bannock Street job. (R. 228-229; 129-

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<sup>3</sup> This individual is to be distinguished from Earl Gould, a partner in Gould & Preisner.



131, 132-133). The Council's action was taken pursuant to its bylaws.<sup>4</sup>

Shortly after this action was taken, Clifford Goold, Fisher, and McDonough visited the Bannock Street job, where they conferred with Lintner, Doose and Earl Gould. Clifford Goold and Fisher reminded Lintner that Gould & Preisner was non-union, and that union men could not work on the job with non-union men. Goold also told Lintner that if Gould & Preisner worked on the job, the Council and its affiliates would have to put a picket on it to notify their members that non-union men were working on the job and that the job was

<sup>4</sup> These bylaws provide, in part, as follows (R. 237-238; 185-186):

#### ARTICLE 1-B

Section 2. The Board of Business Agents, by majority vote at any regular meeting, shall have the power to declare a job unfair and remove all men from the job. They shall also have the power to place the men back on the job when satisfactory arrangements have been made.

Section 3. Any craft refusing to leave a job which has been declared unfair or returning to the job before being ordered back by the Council or its Board of Agents shall be tried, and if found guilty, shall be fined the sum of \$25.00.

#### ARTICLE XI-B

Section 2. The representative of the Council shall have the power to order all strikes when instructed to do so by the Council or Board of Agents. Any member of an affiliated craft who refuses to stop work when ordered to do so by the Council or Board of Agents, shall be reported for action in the Council. All employees on a struck job shall leave the same when ordered to do so by the Council Agent and remain away from the same until such time as a settlement is made, or otherwise ordered.

"unfair." McDonough advised Doose that if he [McDonough] were a contractor "he probably could get rid of Gould & Preisner." Fisher and McDonough informed Gould and Lintner that the Bannock Street job was "too big a job" for the unions to permit non-union electricians to work on it. Gould insisted on completing the job, and McDonough and the Council's representative, Gould, then told Lintner, Doose and Gould that there would be a picket on the job, and that union men, knowing that union bylaws bar union men from working on a picketed job, would leave the job (R. 229-230; 90-91, 112-114, 116-117).

On January 9, the Council's business representative, Clifford Gould, posted a picket on the Bannock Street job carrying a placard reading, "This job unfair to Denver Building and Construction Trades Council." The picket was paid by the Council. The picketing continued from January 9th through January 22, 1948. During this two-week period, no union employees worked on the building; the only employees who reported for work were the non-union electricians of Gould & Preisner (R. 230-231; 29, 65, 92, 93-95, 131-132).<sup>5</sup>

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<sup>5</sup> When the picketing began, there were some union laborers and plumbers at work. The union plumbers on observing the picket line, when they reported for work, picked up their tools and left. The laborers also quit work. The union carpenters had been removed just prior to the picketing in anticipation of it and transferred by Doose & Lintner to another project where construction work continued without interruption during the picketing of the Bannock Street project (R. 230; 94-95, 114-115).

On January 22, before Gould & Preisner had completed its work on the project, Lintner telephoned Preisner and told him that he "would have to get off the job, so he [Lintner] could continue with his project." On the same day, Doose & Lintner, after first showing it to Clifford Gould of the Council, mailed a letter to Gould & Preisner, notifying the latter that its services were being terminated on the Bannock Street job because "your employees are unable to perform services while the employees of other subcontractors are working on the premises" (R. 231; 121-122, 93-94, 181).

On the following day, January 23, the Council removed its picket and shortly thereafter the union employees resumed work on the Bannock Street project. Although Gould & Preisner wrote to Doose & Lintner on January 24 protesting the treatment which it was receiving, its electricians were denied entrance to the Bannock Street job, and thereafter performed no work on that project (R. 232; 82, 95, 182).

On the basis of the foregoing facts, the Board found (R. 258) that the Council and its affiliates, the Electricians and Plumbers, by picketing Doose & Lintner's Bannock Street project and thereby causing members of the local unions affiliated with the Council employed by Doose & Lintner and others to stop working on that job, engaged in, and induced and encouraged these employees to engage in, a strike or concerted refusal to perform services in



the course of their employment. The Board further found (*ibid.*) that an object of this strike action was to force or require Doose & Lintner to cease doing business with Gould & Preisner. The Board, accordingly, concluded that the Council, the Electricians and the Plumbers had engaged in strike action prohibited by Section 8 (b) (4) (A) of the Act.

The Board ordered (R. 260-261) the Council and its two affiliates to cease and desist from engaging in, or inducing or encouraging the employees of Doose & Lintner or any other employer to engage in, a strike or concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services, where an object thereof is to force or require Doose & Lintner or any other employer or other person to cease doing business with Gould & Preisner.

The court below on September 1, 1950, handed down its opinion and judgment denying enforcement of the Board's order. The court held, in accordance with the Board's view \* (see Petition of the National Labor Relations Board for a Writ of Certiorari in *National Labor Relations Board v. International Rice Milling Company*, No. 313, this

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\* *Oil Workers International Union, Local 346 and The Pure Oil Company*, 84 NLRB 315; *United Electrical, Radio and Machine Workers of America and Ryan Construction Corporation*, 85 NLRB 417.

Term, pp. 8-10, that the provisions of Section 8 (b) (4) (A) of the Act, insofar as here pertinent, are directed against secondary boycotts but are not directed against primary strike action. The court, however, gave broader scope to the concept of primary strike action than did the Board. The court stated that the "usual secondary boycott or strike is against one who is not a party to the original dispute. It is designed to cause a neutral to cease doing business with, or to bring pressure upon, the one with whom labor has a dispute. It seeks to enlist this outside influence to force an employer to make peace with the employees or labor organization contesting with him." The court concluded that the strike engaged in here was primary and not secondary in this "usual" sense, and that it was therefore outside the ban of Section 8 (b) (4) (A). In support of this conclusion, the court stated as follows (R. 277, 279):

The picketing and resulting strike were at the premises of the contractor where the subcontractor's men were at work. It grew out of a controversy over the conduct of the contractor in participating in the bringing of the non-union men onto the job as well as over the conduct of the electrical subcontractor in employing them. The purpose of the Council was to render the particular job all union. It was not to require Gould & Preisner to unionize their shop located elsewhere or to bring pressure against Dóose & Lintner at any other place because of the employment of Gould & Preisner

at Bannock Street. Accordingly the object was not in any literal sense to require Doose & Lintner to cease doing business with Gould & Preisner. The pressure was limited to the one job, which was picketed as a whole to make it wholly union and in protest against the employment there of the non-union electricians.

\* \* \* \* \*

Doose & Lintner was not neutral. It brought Gould & Preisner with the non-union labor onto the job. This brought the Council and Doose & Lintner into direct controversy. The picketing was designed to change the situation by bringing about the employment only of union labor on the Bannock Street job. There was no geographical separation at that location between Doose & Lintner and Gould & Preisner. Only by ceasing to work for Doose & Lintner could petitioners' members avoid working with Gould & Preisner's non-union men. Petitioners did not say to Doose & Lintner, in effect, "We will not work for you if you do business with Gould & Preisner." They said, in effect, "we will not work with non-union men, and therefore we will not work for you at the place to which you bring Gould & Preisner with non-union men." We think this action of petitioners was of a primary character even if petitioners envisaged it might result in a cessation of work on the particular job by Gould & Preisner.

#### SPECIFICATION OF ERRORS TO BE URGED

The court below erred:

1. In holding that the strike was primary and not



secondary action within the meaning of Section 8 (b) (4) (A), and therefore outside the scope of that section.

2. In holding that a primary dispute between the Council and its affiliates and Doose & Lintner existed by reason of the latter's action in bringing Gould & Preisner's non-union labor on the Bannock Street project.

3. In apparently rejecting the Board's finding that an object of the strike was to force Doose & Lintner to cease doing business with Gould & Preisner.

4. In seemingly holding that the relationship between a contractor and a subcontractor on a construction project is not comprehended by the phrase "doing business," as used in Section 8 (b) (4) (A).

5. In failing to enforce the Board's order.

#### REASONS FOR GRANTING THE WRIT

1. The holding of the court below on the question presented is, as the opinion itself suggests, in conflict with the decision of the Court of Appeals for the Second Circuit in *International Brotherhood of Electrical Workers v. National Labor Relations Board*, 181 F. 2d 34, and of the Court of Appeals for the Sixth Circuit in *National Labor Relations Board v. Local 74, United Brotherhood of Carpenters, etc.*, 181 F. 2d 126. The decision is also in conflict with the decision of the Fifth Circuit in *In-*

*ternational Rice Milling Co. v. National Labor Relations Board*, 183 F. 2d 21, with respect to the existence of a difference between "primary" and "secondary" disputes in the application of Section 8 (b) (4) of the Act. On this point the Board, believing the decision in the instant case to be correct, has filed a petition for certiorari (No. 313, this Term) in the *Rice Milling* case.

In the *Electrical Workers* case, the Second Circuit, one judge dissenting, held that by picketing a construction project for the purpose of forcing the general contractor to cease doing business with a non-union subcontractor on the project the Union violated Section 8 (b) (4) (A). In so holding, the Second Circuit stated that it made no difference that the general contractor was responsible for bringing the subcontractor on the job; his action in this respect did not give rise to a "primary" dispute between him and the Union so as to exempt picketing of the entire building job from the reach of Section 8 (b) (4) (A). The court said (181 F. 2d at p. 37):

The gravamen of a secondary boycott is that its sanctions bear, not upon the employer who alone is a party to the dispute, but upon some third party who has no concern in it. Its aim is to compel him to stop business with the employer in the hope that this will induce the employer to give in to his employees' demands. We cannot see why it should make any difference that the third person is engaged in a com-

mon venture with the employer, or whether he is dealing with him independently. The phrase "doing business," would ordinarily cover doing any business which the third party is free to discontinue, regardless of whether he is merely supplying materials to the employer, or has subcontracted with him to perform part of a work which the third party has himself contracted to do. The third party cooperates as truly with one to whom he furnishes materials as with a subcontractor. Indeed, when the coercion is upon the third person to break a contract with the employer, his position is more embarrassing than if he may discontinue his relations with the employer without danger of liability. The phrase, "cease doing business," is general and admits of no such evasion.

The court below, on the other hand, held that because the Council's pressure was limited to the one construction project, where Gould and Preisner were using non-union men, "the object was not in any literal sense to require Doose & Lintner to cease doing business with Gould & Preisner."

In the *Electrical Workers* case, the Second Circuit observed that a distinction might be drawn where the operations of the employer with whom the Union is engaged in a dispute "may be so enmeshed with that of the third party that it is impossible to picket one without picketing the other" and that such might have been the situation if, in the case before it, the subcontractor's employees had been at work on the job when the picket-



ing occurred and the Union's only purpose in picketing had been to induce them to quit.<sup>7</sup> Although, in the instant case, Gould & Preisner's employees were at work on the building project during the picketing, whereas in the *Electrical Workers* case the employees of the subcontractor were not, this difference affords no basis for distinction. The court below did not find in the instant case that the Unions' only purpose in picketing was to induce the employees of Gould & Preisner to quit. In both cases, the picketing was directed against the general contractor and the entire construction job. The court below held that the picketing was primary and therefore beyond the proscription of Section 8 (b) (4) (A) because, in its view, the action of the general contractor in bringing the non-union subcontractor on the job made him a primary disputant. In the view of the Second Circuit, on the other hand, the action of the general contractor in bringing a non-union subcontractor on the job does not create a primary dispute authorizing the Union to picket the general contractor.

In the *Local 74* case, the Sixth Circuit held that a union's action, in ordering a strike of its members employed on a building project because the general contractor had brought the employees of a non-union subcontractor on the job was an unfair labor practice within the meaning of Section 8 (b) (4)

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<sup>7</sup> The Second Circuit left open the question whether Section 8 (b) (4) (A) prohibits picketing under such circumstances.

(A) of the amended Act. This holding is likewise in conflict with the decision of the court below, for it necessarily rejects the premise, upon which the decision below rests, that the action of a general contractor in engaging a non-union subcontractor on the job creates a primary dispute between the general contractor and the union, thereby authorizing the union to engage in a strike at the project to force the general contractor to cease doing business with the subcontractor.}

2. The question presented is an important one in the administration of the amended Act. A spot check of the records of the Board discloses that since the effective date of the amended Act, August 22, 1947, approximately 25 percent of nearly 200 charges filed under the statute alleging violations of Section 8 (b) (4) (A) of the Act which have been submitted to the General Counsel of the Board for consideration and appropriate action have involved strikes, picketing, or threats thereof against construction jobs because of the employment thereon of non-union subcontractors. The same problem also arises in connection with Section 8 (b) (4) (B) of the Act.

A large part of the construction work in the Nation is done by means of arrangements between

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\* Because of the conflict between the decision of the court below and those of the Second and Sixth Circuits, the Government is withdrawing, in part, its opposition to the petitions for certiorari in No. 108 and No. 85, this Term, so as to consent to the petitions insofar as they present the question common to all three cases.

contractors and subcontractors similar to those in the instant case.\* - The question presented is therefore a recurring one of widespread importance to employers and labor organizations in the construction industry, and to the public generally.

#### CONCLUSION

The decision below is in conflict with the decisions of two other Circuit Courts of Appeals. The question raised by these decisions is of importance in the administration of the amended Act. It is therefore respectfully submitted that this petition for a writ of certiorari should be granted.

PHILIP B. PERLMAN,

*Solicitor General.*

GEORGE J. BOTT,

*General Counsel,*

*National Labor Relations Board.*

OCTOBER, 1950.

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\* Indicative of the far-reaching scope of the problem, is the fact that in March 1948, the latest date for which figures are available, out of approximately 2,000,000 workers employed in the contract construction industry, in excess of 900,000 were employed by so-called special trade contractors such as electricians, plumbers, etc. Social Security Administration, Bureau of Old-Age and Survivor's Insurance "Estimated March 1948 Employment By Industry and Size of Reporting Unit." (Table 22)



## APPENDIX

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Supp. III, 141, *et seq.*) are as follows:

## UNFAIR LABOR PRACTICES

Sec. 8. \* \* \*

(b) It shall be an unfair labor practice for a labor organization or its agents—

(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services, where an object thereof is:

(A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person;

(B) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9; \* \* \*

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**UNITED STATES GOVERNMENT PRINTING OFFICE**

WASHINGTON, D.C. 20540

**NATIONAL LABOR RELATIONS BOARD, PETITIONER**

**VS.**  
**UNITED STATES AND DISTRICT COURT, DISTRICT OF COLUMBIA, PETITIONER OF**  
**INDUSTRIAL WORKERS OF AMERICA, LOCAL 15, AND UNITED ASSOCIATION OF JOURNALISM AND**  
**ADVERTISING OF THE DISTRICT OF COLUMBIA AND**  
**THE UNITED STATES OF AMERICA, AND**  
**JOHN A. F. L. NO. 3**

**ON PETITION OF DISTRICT OF COLUMBIA**  
**FOR APPOINTMENT OF RECEIVERS OF COLUMBIA**  
**UNIVERSITY**

**UNITED STATES GOVERNMENT PRINTING OFFICE**

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# **In the Supreme Court of the United States**

OCTOBER TERM, 1950

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No. 393

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

DENVER BUILDING AND CONSTRUCTION TRADES  
COUNCIL; INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, A. F. OF L., LOCAL 68;  
AND UNITED ASSOCIATION OF JOURNEYMEN AND  
APPRENTICES OF THE PLUMBING AND PIPE  
FITTING INDUSTRY OF THE UNITED STATES AND  
CANADA, A. F. L., LOCAL No. 3

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*ON WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA  
CIRCUIT*

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BRIEF FOR THE NATIONAL LABOR RELATIONS  
BOARD

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OPINIONS BELOW

The opinion of the Court of Appeals (R. 265-281) is not yet officially reported. The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 256-263, 211-247) are reported at 82 NLRB 1195.

## JURISDICTION

The judgment of the Court of Appeals was entered on September 1, 1950 (R. 282). The petition for a writ of certiorari was granted on December 11, 1950. The jurisdiction of this Court is invoked under 28 U. S. C., Section 1254, and Section 10 (e) of the National Labor Relations Act, as amended.

## QUESTION PRESENTED

A union was engaged in a dispute with a non-union subcontractor. Because the latter and his employees were working there, unions picketed at the situs of a construction project. The picketing was designed to induce employees of the general contractor and other subcontractors to cease work on the project, and thus to exert pressure on the general contractor to stop doing business with the non-union subcontractor on the project. The question presented is whether by such picketing the unions violated Section 8 (b) (4) (A) of the Act.<sup>1</sup>

<sup>1</sup> Respondents, in their memorandum in response to the petition for certiorari, stated that if the petition were granted, they proposed to argue that the judgment below should be sustained upon either or both of two additional grounds, which were rejected by the court below. These are: (1) The unfair labor practices did not affect commerce within the meaning of the Act; (2) The judgment of the United States District Court for the District of Colorado dismissing the interlocutory injunction proceedings brought on behalf of the Board pursuant to Section 10 (1) of the Act against respondents on the ground that the alleged unfair labor practices did not affect commerce within the meaning of the Act was *res judicata* on the question of the Board's jurisdiction in the instant unfair labor practice proceeding before the Board.

The commerce issue, which was dealt with fully by the court below (R. 267-270), is discussed generally in our brief in the *Watson* case, No. 85, this Term, and the application of the



## STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Supp. III, 141, *et seq.*), are set forth in the Appendix, *infra*, pp. 68-69.

## STATEMENT

I. The Board's Findings of Fact

Upon the usual proceedings under Section 10 of the amended Act, the Board, on April 13, 1949, issued its findings of fact, conclusions of law and order (R. 256-263, 211-247). Briefly, in pertinent part, the Board found that the respondent labor organizations violated Section 8(b) (4) (A) of the Act by picketing a building being erected by Doose

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governing principles to the facts of the instant case is treated therein.

We believe the second contention to be without merit not only for the reasons stated by the court below (R. 270-272), which we adopt herein by reference, but also because the doctrine of *res judicata* is inapplicable by reason of lack of identity of the causes of action. The relief contemplated in Section 10(1) is in the nature of an interlocutory injunction. The district court is not called upon to decide whether unfair labor practices affecting commerce have been committed, but merely whether there is reasonable cause to believe that they have. The ultimate determination of the truth of the charges and the existence of a violation is reserved exclusively to the Board in proceedings before it under Section 10 (b) and (c) subject to review by the courts of appeals. *Shore v. Building & Construction Trades Council*, 173 F. 2d 678 (C.A. 3); *Douds v. Local 294, Etc.*, 75 F. Supp. 414 (N. D. N. Y.); *Evans v. International Typographical Union*, 76 F. Supp. 881 (S. D. Ind.); *Styles v. Local 74, United Brotherhood of Carpenters, Etc.*, 74 F. Supp. 499 (E. D. Tenn.); *Douds v. Wine, Liquor & Distillery Workers Union, Local No. 1*, 75 F. Supp. 447 (S. D. N. Y.). That "identity of the causes of action" in the two proceedings, which is an essential element of the doctrine of *res judicata*, is therefore missing here. *Angel v. Bullington*, 330 U. S. 183, 186.

& Lintner, a general contractor, thereby causing members of local unions affiliated with the respondent Council to cease work on that project, with an object of forcing Doose & Lintner to cease doing business with Gould & Preisner, a non-union subcontractor who was employed on the building project. The Board's subsidiary findings and the supporting evidence may be summarized as follows:<sup>14</sup>

The Denver Building and Construction Trades Council, hereinafter called the Council, is a labor organization composed of delegates from the various local labor unions whose members are engaged in building and construction work in Denver, Colorado, and vicinity. The Council is engaged in representing and protecting the interests of its constituent unions and their members (R. 220; 22, 29). Among the craft unions affiliated with the Council are the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry, Inc., Local No. 3, hereinafter called the Plumbers, and the International Brotherhood of Electrical Workers, A. F. of L., Local 68, hereinafter called the Electricians (*ibid.*).

Gould & Preisner is a partnership composed of Earl C. Gould and John C. Preisner (R. 216; 22, 29, 54-55). For approximately 20 years the firm

<sup>14</sup> In the following statement, whenever a semicolon appears, record references preceding the semicolon are to the Board's findings; succeeding references are to the supporting evidence.

has been engaged in electrical contracting work in connection with residential, commercial and industrial construction projects in Denver, Colorado (*ibid.*). In the course of its operations Gould & Preisner purchases various materials including copper wire, electric metallic tubing, conduits, steel boxes, panels, switches, and plugs. In 1947, the firm purchased raw materials valued at \$86,500 of which approximately 65 percent, or \$55,745, was purchased directly from more than forty firms located outside of the State of Colorado. Of the materials purchased locally in Colorado, practically all were produced outside of Colorado and then resold to Gould & Preisner (R. 216-217; 55-56).

Among the customers of Gould & Preisner are several firms which are engaged in interstate commerce. During 1946 and 1947, for example, Gould & Preisner performed work for such firms ranging in value from \$1,024 to \$7,467. (R. 217; 58-60, 171).

At the time of the hearing before the Board's Trial Examiner, Gould & Preisner had 28 employees (R. 216; 55). The firm has operated as a non-union shop (R. 220; 91). As a consequence, it has been involved in a long-standing labor dispute with the Council and some of its affiliates, particularly the Electricians, and for many years the firm has been listed as "unfair" by the Council (R. 220-221; 132).

In September 1947, Gould & Preisner entered into arrangements with Doose & Lintner, a part-



nership engaged in the general building construction business in Denver, to perform for a price estimated at \$2,300, certain electrical work, including the furnishing of materials on a commercial building being erected by Doose & Lintner, on Bannock Street in Denver.<sup>2</sup> Doose & Lintner also entered into arrangements with other contractors to perform essential work on that building. Gould & Preisner began work on the Bannock Street building late in October 1947 (R. 227; 60-61). Its employees were the only non-union employees working on the building. The others, including plumbers, laborers and carpenters, employed by Doose & Lintner and various subcontractors engaged on the job were members of unions affiliated with the Council (R. 230-231; 91, 114-115).

In November 1947, and again about a month later, Jack Fisher, an assistant business agent of the Electricians, met Earl Gould, a partner in Gould & Preisner, and after pointing out to him that his firm's employees were the only non-union men working on the Bannock Street job, said that he did not see how it could progress with them working on that job. Gould insisted that they would complete their work pursuant to their con-

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<sup>2</sup> As hereinafter noted, Doose & Lintner terminated the services of Gould & Preisner before completion of the work undertaken by the latter; at the time its services were terminated, Gould & Preisner had spent \$348.55 for materials used by it on the project. The record does not disclose what percentage, if any, of these materials came from out-of-state sources (R. 218; 175).

tract unless they were "bodily put off." Fisher replied that the situation would be difficult for both Gould & Preisner and Doose & Lintner (R. 228; 63-64).

On January 8, 1948, a representative of the Electricians reported to the Council's business representative, Clifford Goold,<sup>3</sup> that the services of Gould & Preisner were being used by Doose & Lintner on the Bannock Street job. That same day, the Council's Board of Business Agents held a meeting attended by a majority of the business agents of various craft unions affiliated with the Council, including Clyde Williams and Jack Fisher, agents of the Electricians, and Mike McDonough, an agent of the Plumbers. At this meeting it was decided, and business representative Goold of the Council was instructed, "to place a picket on the Bannock Street job stating that the job was unfair" to the Council. In keeping with the Council's practice, each organization affiliated with it was furnished with a copy of the minutes of that meeting, which noted the decision to picket Doose & Lintner's Bannock Street job (R. 228-229; 129-131, 132-133). The Council's action was taken pursuant to its by-laws.<sup>4</sup>

<sup>3</sup> This individual is to be distinguished from Earl Gould, a partner in Gould & Preisner.

<sup>4</sup> These bylaws provide, in part, as follows (R. 237-238; 185-186):

#### ARTICLE 1-B

Section 2. The Board of Business Agents, by majority, vote at any regular meeting, shall have the power to

Shortly after this action was taken, Clifford Goold, Fisher, and McDonough visited the Bannock Street job, where they conferred with Lintner, Doose and Earl Gould. Clifford Goold and Fisher reminded Lintner that Gould & Preisner was non-union, and that union men could not work on the job with non-union men. Goold also told Lintner that if Gould & Preisner worked on the job, the Council and its affiliates would have to put a picket on it to notify their members that non-union men were working on the job and that the

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declare a job unfair and remove all men from the job. They shall also have the power to place the men back on the job when satisfactory arrangements have been made.

Section 3. Any craft refusing to leave a job which has been declared unfair or returning to the job before being ordered back by the Council or its Board of Agents shall be tried, and if found guilty, shall be fined the sum of \$25.00.

\* \* \* \* \*

## ARTICLE XI-B

\* \* \* \* \*

Section 2. The representative of the Council shall have the power to order all strikes when instructed to do so by the Council or Board of Agents. Any member of an affiliated craft who refuses to stop work when ordered to do so by the Council or Board of Agents, shall be reported for action in the Council. All employees on a struck job shall leave the same when ordered to do so by the Council Agent and remain away from the same until such time as a settlement is made, or otherwise ordered.



job was "unfair." McDonough advised Doose that if he [McDonough] were a contractor "he probably could get rid of Gould & Preisner." Fisher and McDonough informed Gould and Lintner that the Bannock Street job was "too big a job" for the unions to permit non-union electricians to work on it. Gould insisted on completing the job, and McDonough and the Council's representative, Goold, then told Lintner, Doose and Gould that there would be a picket on the job; and that union men, knowing that union bylaws bar union men from working on a picketed job, would leave the job (R. 229-230; 90-91, 112-114, 116-117).

On January 9, the Council's business representative, Clifford Goold, posted a picket on the Bannock Street job carrying a placard reading, "This job unfair to Denver Building and Construction Trades Council." The picket was paid by the Council. The picketing continued from January 9th through January 22, 1948. During this two-week period, no union employees worked on the building; the only employees who reported for work were the non-union electricians of Gould & Preisner (R. 230-231; 29, 65, 92, 93-95, 131-132).<sup>5</sup>

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<sup>5</sup> When the picketing began, there were some union laborers and plumbers at work. The union plumbers, on observing the picket line, when they reported for work, picked up their tools and left. The laborers also quit work. The union carpenters had been removed just prior to the picketing in anticipation of it and transferred by Doose & Lintner to another project where construction work continued without interruption during the picketing of the Bannock Street project (R. 230, 258; 94-95, 114-115).

On January 22, before Gould & Preisner had completed its work on the project, Lintner telephoned Preisner and told him that he "would have to get off the job, so he [Lintner] could continue with his project." On the same day, Doose & Lintner, after first showing it to Clifford Gould of the Council, mailed a letter to Gould & Preisner, notifying the latter that its services were being terminated on the Bannock Street job because "your employees are unable to perform services while the employees of other subcontractors are working on the premises" (R. 231; 121-122, 93-94, 181).

On the following day, January 23, the Council removed its picket and shortly thereafter the union employees resumed work on the Bannock Street project. Although Gould & Preisner wrote to Doose & Lintner on January 24 protesting the treatment which it was receiving, its electricians were denied entrance to the Bannock Street job, and thereafter performed no work on that project. (R. 232; 82, 95, 182).

## *II. The Board's Conclusions and Order*

On the basis of the foregoing facts, the Board found (R. 258) that the Council and its affiliates, the Electricians and Plumbers, by picketing Doose & Lintner's Bannock Street project and thereby causing members of the local unions affiliated with the Council employed by Doose & Lintner and others to stop working on that job, engaged in, and

induced and encouraged these employees to engage in, a strike or concerted refusal to perform services in the course of their employment. The Board further found (*ibid.*) that an object of this strike action was to force or require Doose & Lintner to cease doing business with Gould & Preisner. The Board, accordingly, concluded that the Council, the Electricians and the Plumbers had engaged in strike action prohibited by Section 8 (b) (4) (A) of the Act.

The Board ordered (R. 260-261) the Council and its two affiliates to cease and desist from engaging in, or inducing or encouraging the employees of Doose & Lintner or any other employer to engage in, a strike or concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services, where an object thereof is to force or require Doose & Lintner or any other employer or other person to cease doing business with Gould & Preisner.

### III. *The Decision Below*

The court below on September 1, 1950, handed down its opinion and judgment denying enforcement of the Board's order. The court held, in accordance with the Board's view (see Brief for the National Labor Relations Board in *National Labor Relations Board v. International Rice Milling Com-*



pany, No. 313, this Term, pp. 7-10) that the provisions of Section 8 (b) (4) (A) of the Act, insofar as here pertinent, are directed against secondary boycotts but are not directed against primary strike action. The court, however, gave broader scope to the concept of primary strike action than did the Board. The court stated that the "usual secondary boycott or strike is against one who is not a party to the original dispute. It is designed to cause a neutral to cease doing business with, or to bring pressure upon, the one with whom labor has a dispute. It seeks to enlist this outside influence to force an employer to make peace with the employees or labor organization contesting with him." The court held that the strike engaged in here was primary and not secondary in this "usual" sense, and that it was therefore outside the ban of Section 8 (b) (4) (A). In support of this conclusion, the court stated as follows (R. 277, 279):

The picketing and resulting strike were at the premises of the contractor where the subcontractor's men were at work. It grew out of a controversy over the conduct of the contractor in participating in the bringing of the non-union men onto the job as well as over the conduct of the electrical subcontractor in employing them. The purpose of the Council was to render the particular job all union. It was not to require Gould & Preisner to unionize their shop located elsewhere or to bring pressure against Doose & Lintner at any other

place because of the employment of Gould & Preisner at Bannock Street. Accordingly, the object was not in any literal sense to require Doose & Lintner to cease doing business with Gould & Preisner. The pressure was limited to the one job, which was picketed as a whole to make it wholly union and in protest against the employment there of the non-union electricians.

\* \* \* \* \*

Doose & Lintner was not neutral. It brought Gould & Preisner with the non-union labor onto the job. This brought the Council and Doose & Lintner into direct controversy. The picketing was designed to change the situation by bringing about the employment only of union labor on the Bannock Street job. There was no geographical separation at that location between Doose & Lintner and Gould & Preisner. Only by ceasing to work for Doose & Lintner could petitioners' members avoid working with Gould & Preisner's non-union men. Petitioners did not say to Doose & Lintner, in effect, "We will not work for you if you do business with Gould & Preisner." They said, in effect, "we will not work with non-union men, and therefore we will not work for you at the place to which you bring Gould & Preisner with non-union men." We think this action of petitioners was of a primary character even if petitioners envisaged it might result in a cessation of work on the particular job by Gould & Preisner.

## SPECIFICATION OF ERRORS TO BE URGED

The court below erred:

1. In holding that the strike was primary and not secondary action within the meaning of Section 8 (b) (4) (A), and therefore outside the scope of that section.

2. In holding that a primary dispute between the Council and its affiliates and Doose & Lintner existed by reason of the latter's action in bringing Gould & Preisner's non-union labor on the Bannock Street project.

3. In apparently rejecting the Board's finding that an object of the strike was to force Doose & Lintner to cease doing business with Gould & Preisner.

4. In seemingly holding that the relationship between a contractor and a subcontractor on a construction project is not comprehended by the phrase "doing business with any other person," as used in Section 8 (b) (4) (A).

5. In failing to enforce the Board's order.

## SUMMARY OF ARGUMENT

## I

A. In drawing the line between secondary strikes and picketing, which Section 8 (b) (4) (A) proscribes, and primary strikes and picketing, which the Act does not proscribe and indeed protects, the Board is required to determine whether picketing or other strike action in any given case is directed against the primary or against a secondary



employer. Where the premises of the primary and secondary employers are separated geographically, this determination can generally be made on the basis of the fact that the bounds of primary economic conflict are the primary employer's premises. Where there is no geographic separation, i.e., where both the primary and the neutral employer are doing business at the same premises, the situs test does not suffice. To hold all picketing at such shared premises to be secondary would result in banning any effective strike action against the primary employer. To hold it all primary would deny to neutral employers the protection which Congress intended to accord them, merely because of the fortuitous geographical nexus.

In determining whether picketing or other strike action in such common-situs cases is primary or secondary the Board inquires (1) whether the labor organization involved has advertised the dispute as involving the primary employer exclusively, or by its publicity or directions has indicated that it regards the dispute as extending to neutral employers as well; (2) whether the labor organization has indicated that its direct and immediate objective is to force neutral employers to cease doing business with the primary employer or is merely to curtail the primary employer's business; (3) whether the labor organization has attempted to induce employees of neutral employers to refuse to perform services for their own employer rather than merely

to refuse to render such services as assist the primary employer at the latter's place of business; (4) whether the labor organization has restricted its picketing as closely as practicable under the circumstances both in point of time and place to the immediate situs of the primary dispute.

B. Applying the foregoing criteria to the instant case, the Board properly found that respondents engaged in secondary strike action violative of Section 8 (b) (4) (A). Respondents did not confine their strike action to Gould & Preisner, the primary employer, but extended it to the operations of Doose & Lintner, a secondary employer. They publicized the entire Bannock Street project as unfair, not merely the operations of Gould & Preisner. The picketing was intended to and did serve as a signal to the employees of Doose & Lintner and its subcontractors to strike. And the express purpose of the picketing was to force Doose & Lintner to discontinue the services of Gould & Preisner.

## II

A. Respondents' contention that the strike did not have as "an object," within the meaning of the statute, forcing or requiring Doose & Lintner to cease doing business with Gould & Preisner, rests upon the fallacious premise that only respondents' ultimate objective, unionizing the project, may appropriately be considered. But it is clear that respondents attempted to achieve that goal by strike

action designed to force a cessation of business between Gould & Preisner and Doose & Lintner. This immediate object, forcing a neutral employer to cease doing business with another person, is the subject of the statutory ban. Section 8 (b) (4) (A) does not require that this be the *sole* object of the strike action. Seldom indeed is that object an end in itself. Congress deliberately banned all strike action in which cessation of business relations was "an object."

The record does not support the claim that respondents were not seeking to force Doose & Lintner to cease doing business with Gould & Preisner, but were merely refusing to work with non-union men. Under such an interpretation of respondents' strike action virtually all secondary boycotts would escape the statutory prohibition.

B. Respondents' claim that the action of Doose & Lintner in contracting for the services of Gould & Preisner gave rise to a primary dispute between respondents and Doose & Lintner is likewise incompatible with the objectives of Congress. In Section 8 (b) (4) (A) Congress sought to protect against secondary strike action neutral employers, i.e., employers who were not involved in a labor dispute over self-organization or terms and conditions of employment in their own establishments. Obviously, the fact that one employer, over a union's protest, does business with another employer who is involved in a labor dispute, does not create a dispute between the former employer and the union



over working conditions in the former's establishment. To regard the mere doing of business as itself giving rise to a primary dispute would exempt from the reach of the Act the very conduct that Section 8 (b) (4) (A) was designed to curb.

C. Respondents' contention that because a general contractor and subcontractor, like Doose & Lintner and Gould & Preisner, are engaged in work at the same construction site they are "allies" and that for this reason the general contractor is not entitled to claim the protection which Congress accorded to neutrals, overlooks the fact that although the two contractors work together on the same project they are independent as entrepreneurs and as employers. In its relation with Doose & Lintner, Gould & Preisner is clearly within the class "any other person," which Congress protected in Section 8 (b) (4) (A). There is no statutory basis for the suggestion that Gould & Preisner and Doose & Lintner were not "doing business" with each other within the meaning of Section 8 (b) (4) (A), merely because they were engaged on a common project. Although a greater degree of economic interdependence may exist between the two contractors on the one hand and between their employees on the other than exists generally between independent business enterprises, Congress refused to qualify the phrase "doing business with any other person" to take account of such community of interests. It deliberately prohibited all strike pressures directed against employers who

were not themselves immediately involved in a labor dispute. That such a result permits a general contractor to obtain, by subcontracting with a non-union concern, immunity from strike pressure which he would not enjoy if he performed the work with his own non-union employees, does not invalidate the statutory scheme. The immunity which a general contractor may obtain by this device is no different than the immunity which may be obtained by a manufacturer who chooses to purchase goods from a non-union supplier rather than produce them with non-union employees himself.

D. Respondents' contention that Section 8 (b) (4) (A) prohibits only a "product" boycott and therefore has no application to the relationship existing between a contractor and a subcontractor has no basis either in legislative history or in the statutory scheme. Such a reading of the Section would make of the phrase "or to cease doing business with any other person" mere surplusage.

E. The problem of applying the statutory line between primary and secondary strike action in common situs cases was left by Congress to the "empiric process of administration." *Phelps Dodge Corp. v. National Labor Relations Board*, 313 U. S. 177, 194. The criteria adopted by the Board in approaching this problem effectuate the objectives of Congress, and their application in this case is clearly warranted by the record. The Board's finding that respondents engaged in prohibited secondary strike action should therefore

be sustained. *National Labor Relations Board v. Hearst Publications, Inc.*, 322 U. S. 111, 130.

## ARGUMENT

### INTRODUCTION

The problems posed by this case must be put in proper perspective. In our brief in the *Rice Milling* case, No. 313, this Term, we have attempted to demonstrate that, notwithstanding the literal terms of the provision, for purposes of application of Section 8 (b) (4) (A), a distinction must be drawn between primary and secondary strike pressure, and that the section prohibits only the latter. This distinction, which the Board adopted from the very beginning and has since uniformly applied, has either been approved or assumed by every court, with the single exception of the Court of Appeals for the Fifth Circuit, which has considered the matter. The distinction was accepted by the court below in the instant case, and forms the premise of its reasoning. However, the court below gave broader scope to the exemption of primary strike pressure than did the Board, for it concluded that the strike action here, which the Board had found secondary and therefore illegal, was primary and therefore protected.

If in the *Rice Milling* case, No. 313, this Court should reject the distinction urged by the Board between primary and secondary strike action, the basic premise from which the court below proceeded would be destroyed, and it would unquestionably follow that the judgment below should be



reversed. For there could be little doubt that the strike action involved in this case falls squarely within the literal language of Section 8 (b) (4) (A), and hence—if the Board's construction be rejected—constitutes an unfair labor practice prohibited by the Act.

# I

## PICKETING AND OTHER STRIKE ACTION DIRECTED AGAINST A NEUTRAL EMPLOYER, AT A PLACE WHERE HE IS ENGAGED IN BUSINESS, IS PROPERLY HELD SECONDARY, AND THEREFORE VIOLATIVE OF SECTION 8 (b) (4) (A), ALTHOUGH THE SAME SITUS IS ALSO THE SCENE OF A LABOR DISPUTE BETWEEN THE UNION AND OTHER ~~EMPLOYER~~ AN

In our brief in the *Rice Milling* case we have shown that Section 8 (b) (4) (A) represents an effort by Congress to achieve a satisfactory reconciliation of the interest of employees and labor organizations in exerting effective economic pressure upon employer participants in labor disputes, on the one hand, and the interest of neutral employers in immunity from economic pressure, on the other. To preserve the bargaining power of labor organizations in disputes with employers, Congress left them free to employ the traditional weapons of economic conflict, including strikes and picketing. But to protect neutral employers against becoming embroiled, to their economic detriment, in quarrels not their own, Congress "decided to draw a line at secondary boycotts."

*International Brotherhood of Electrical Workers v. National Labor Relations Board*, 181 F. 2d 34, 40 (C. A. 2).

Recognition that Section 8 (b) (4) (A) is a practical compromise between these conflicting interests has been the cornerstone of the Board's approach in the construction and application of its provisions. Because "Section 8 (b) (4) (A) is aimed at secondary boycotts and secondary strike activities \* \* \* [and] was not intended to proscribe primary action by a union having a legitimate labor dispute with an employer" (*Sailors' Union of the Pacific, AFL and Moore Dry Dock Company*, 92 NLRB No. 93, decided December 13, 1950), the Board has consistently held, as it did in the *Rice Milling* case, that strike action, including picketing, which is designed directly to induce an employer to grant economic or organizational demands is primary and not secondary, even though such picketing is also "necessarily designed to induce and encourage third persons to cease doing business with" such "primary" employer. *Oil Workers International Union and Pure Oil Company*, 84 NLRB 315, 318. On the other hand, strike action directed against an employer who is not in a position to grant the union's economic or organizational demands, i.e., a neutral or "secondary" employer, for the purpose of inducing him to cease doing business with the primary employer, is clearly forbidden by the purpose as well as by the language of Section 8 (b) (4) (A).

**A. THE BOARD'S CRITERIA FOR DETERMINING WHETHER PICKETING AND OTHER STRIKE ACTION IN COMMON SITUS CASES IS PRIMARY OR SECONDARY, ARE REASONABLE AND CALCULATED TO EFFECTUATE THE OBJECTIVES OF CONGRESS**

In the usual case, where the employer's place of business is stationary, and geographically removed from the premises of any other employer, the question whether particular strike action is directed against the "primary" employer or against a "secondary" employer is relatively simple of solution. In such a case the question is ordinarily resolved by the fact that the bounds of primary economic conflict are geographically confined to the situs of the labor dispute. If strike action is so confined, *i.e.*, if picketing is restricted to the premises adjacent to the primary employer's business, or if third persons are merely induced not to enter those premises, then the picketing is obviously primary and lawful. If picketing is not so restricted, *i.e.*, if it extends to the place of business of a neutral employer, it is secondary and unlawful. The former was the situation in the *Rice Milling* case, where Kaplan Mills and Sales House operated at different locations; the latter prevailed in the *Wadsworth*<sup>6</sup> and *Sealright*<sup>7</sup> cases. In the *Wadsworth* case the union was

<sup>6</sup> *United Brotherhood of Carpenters and Joiners of America and Wadsworth Building Company*, 81 NLRB 802, enforced 184 F. 2d 60 (C.A. 10), pending on petition for certiorari, No. 387.

<sup>7</sup> *Printing Specialties and Paper Converters Union, Local 388, A.F.L. and Sealright Pacific, Ltd.*, 82 NLRB 271.



engaged in a strike at the plant of the primary employer, a manufacturer of prefabricated houses. In order to exert pressure upon the primary employer the Union picketed a site, geographically removed from the primary employer's plant, where an independent contractor was engaged in erecting houses he had purchased from the primary employer. Similarly, in the *Sealright* case, the union which had called a strike against the primary employer picketed the premises of other employers who did business with the primary employer. The picketing in these cases, unlike the picketing in *Rice Milling*, was not confined to the situs of the primary dispute, and sought to disrupt business relations at places other than the primary employer's premises. These, therefore, were classic secondary boycotts of the very type used in the course of debate on the bill to illustrate the nature of practices which Section 8 (b) (4) (A) was designed to curb. See Brief for the Board in No. 313, pp. 28-32. In both cases the Board held that the picketing was directed against neutral employers and was therefore prohibited by Section 8 (b) (4) (A). The underlying rationale of these decisions has since been restated by the Board as follows (*International Brotherhood of Teamsters, etc.* and *Schultz Refrigerated Service, Inc.*, 87 NLRB 502, 505):

Heretofore, in cases involving an interpretation of the restriction contained in Section 8

(b) (4) (A), the primary employer, and generally, the secondary employer, conducted their operations at fixed geographical locations. Thus, in the *Wadsworth* and *Sealright* cases, it was clear that the immediate vicinity of the struck plant, the situs of the primary employer's business, constituted the area of lawful primary activity. Under those circumstances, the union by extending its picket line to the premises of other employers and thus abandoning the scene of its actual dispute with the primary employer, went beyond the protected area of primary picketing. Its picket line so extended was no longer local in point of contact to the primary employer's manufacturing operations, the only business directly involved in the labor dispute. Such picketing was secondary conduct violative of Section 8 (b) (4) (A).<sup>8</sup>

Where there is no geographic separation between the premises of the primary employer and those of a neutral employer, difficulties are encountered in drawing the line between permissible primary action and proscribed secondary action. Clearly, the line cannot be drawn at either extreme. To regard all picketing and other strike action

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<sup>8</sup> Cf. *Wine, Liquor & Distillery Workers Union, etc. (Schenley Distillers Corporation)*, 78 NLRB 504, enforced *sub nom. N.L.R.B. v. Wine, Liquor & Distillery Workers Union, etc.*, 178 F. 2d 584 (C. A. 2); *Service Trade Chauffeurs etc. (Howland Dry Goods Co.)*, 85 NLRB 1037; *Metal Polishers etc. International Union (Climax Machinery Co.)*, 86 NLRB 1243; *Local 294, International Brotherhood of Teamsters etc. (Western Express, Inc.)*, 91 NLRB No. 45.

which occurs at premises shared by the primary employer and neutral employers as primary, would grant unwarranted exemption from the ban of the statute to strike actions directed at the business of neutral employers, merely because of the fortuitous geographic factor. . On the other hand, to regard all such picketing as secondary would result in banning any effective strike action against the primary employer, where the geographic situs happens to be the same as that of a neutral employer. Effectuation of the dual objectives of Congress, i.e., to shield neutral employers from involvement in quarrels not their own, and to preserve the right of labor organizations to bring effective economic pressure to bear upon primary employers, has thus impelled the Board to invoke additional criteria, supplementary to the situs test, for determining whether the primary employer or a neutral employer is the target of the particular strike action.

These criteria are used by the Board to assist it in determining, in a wide variety of situations, whether the labor organization involved has, as the law requires, treated only the primary employer as its antagonist, or whether it has gone further and conscripted neutral employers as parties to the dispute. The Board has considered it particularly pertinent to inquire into these questions: (1) whether the labor organization involved has publicized the dispute as involving the primary employer exclusively, or has by its publicity or direc-



tions indicated that it regards the dispute as extending to neutral employers as well; (2) whether the labor organization has indicated that its direct and immediate objective is to force neutral employers to cease doing business with the primary employer, or is merely to curtail the primary employer's business; (3) whether the labor organization has attempted to induce employees of neutral employers to refuse to perform services for their own employer, rather than merely to refuse to render only such services as assist the primary employer; and (4) whether the labor organization has restricted its picketing as closely as practicable under the circumstances both in point of time and place to the immediate situs of the primary dispute. Several situations in which the Board has invoked these criteria illustrate their practical application and effect.

In one group of cases the secondary, or neutral, employer is engaged in business operations, either temporarily or permanently, on the primary employer's premises. The Board in these cases recognizes that picketing of the primary employer at his premises should not be curtailed merely because of the presence at those premises of a neutral employer and his employees. Thus, in the *Ryan*<sup>\*</sup> case, the union picketed the premises of the primary employer, including a gate that had been cut through

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<sup>\*</sup> *United Electrical, Radio and Machine Workers of America and Ryan Construction Co.*, 85 NLRB 417.

the surrounding fence to provide ingress for the employees of a contractor who was constructing additional facilities for the primary employer on his premises. The pickets carried signs advertising only their dispute with the primary employer. The Board concluded that since the picketing was confined to the premises of the primary employer and related only to the primary dispute, it was permissible primary picketing even though it had the incidental effect, intended or not, of enlisting the aid of the secondary employer's employees. In arriving at this conclusion, the Board said (85 NLRB at p. 418):

As the record reveals and the Trial Examiner finds, the Respondents, *in support of their demands on Bucyrus* [the primary employer], *proceeded to picket the entire Bucyrus premises*, including the gate that had been cut through the fence to provide ingress for Ryan [the secondary employer] employees to the site of a construction project Ryan was performing for Bucyrus. All this picketing was therefore *primary* picketing. Concededly, an object of the picketing was to enlist the aid of Ryan employees, as well as that of employees of all other Bucyrus customers and suppliers. However, Section 8 (b) (4) (A) was not intended by Congress, as the legislative history makes abundantly clear, to curb primary picketing. It was intended only to outlaw certain *secondary* boycotts, whereby unions sought to enlarge the economic battle-

ground beyond the premises of the primary Employer. When picketing is wholly at the premises of the employer with whom the union is engaged in a labor dispute, it cannot be called "secondary" even though, as is virtually always the case, an object of the picketing is to dissuade all persons from entering such premises for business reasons. It makes no difference whether 1 or 100 other employees wish to enter the premises. It follows in this case that the picketing of Bucyrus premises, which was primary because in support of a labor dispute *with Bucyrus*, did not lose its character and become "secondary" at the so-called Ryan gate because Ryan employees were the only persons regularly entering Bucyrus premises at that gate. While we agree that Section 8 (b) (4) (A) represents an intent by Congress to restrict union action to the "parties immediately involved," as the dissent states, we do not agree that by picketing the Ryan gate the Respondents were enlarging the area of the dispute. *The signs and placards carried by the pickets at the Ryan gate, which were the same as the signs carried at other gates of the Bucyrus premises, were directed at Bucyrus, not Ryan. [Italics added.]*

A similar situation was presented to the Board in the *Pure Oil* case.<sup>10</sup> There the union picketed a dock which belonged to, and was normally operated by the primary employer, with whom the

<sup>10</sup> *Oil Workers International Union and Pure Oil Co.*, 84 NLRB 315.



Union was engaged in a dispute concerning terms and conditions of employment affecting employees employed by the primary employer at the dock. Shortly before and in anticipation of the picketing, the primary employer entered into arrangements with another employer, under which the latter undertook to perform at the dock operations which had previously been performed by the striking employees of the primary employer. Rejecting the contention that the picketing, which advertised the union's dispute with the primary employer, was unlawful, the Board said (84 NLRB at pp. 318-319, 319-320) :

In this case the Union was making certain lawful demands on Standard Oil [i.e., the primary employer]. It was pressing these demands, in part, by picketing the Standard Oil dock. As that picketing was confined to the immediate vicinity of Standard Oil premises we find that it constituted permissive primary action.

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The fact that the Union's primary pressure on Standard Oil may have also had a secondary effect, namely inducing and encouraging employees of other employers to cease doing business on Standard Oil premises, does not, in our opinion, convert lawful primary action into unlawful secondary action within the meaning of Section 8 (b) (4) (A).

In another group of cases the business operations of the primary employer are ambulatory and

take place temporarily at the premises of secondary or neutral employers. In these cases the Board holds that since economic pressure can be exerted upon the primary employer only at the secondary employer's premises, picketing, if restricted to the times when the primary employer is doing business at the neutral's premises, and designed only to publicize the dispute with the primary employer, is permissible there. If not so restricted, the picketing is held secondary and unlawful.

In the *Schultz* case,<sup>11</sup> a union involved in a dispute with a trucking concern over the employment of drivers, established a U-shaped picket line around the company's trucks whenever they stopped at the business establishments of its customers to make pick-ups or deliveries. The picketing was limited physically to the trucks of the employer and continued only during such time as the trucks stopped to deliver or pick up merchandise. On these facts, the Board concluded that since the dispute between the union and the primary employer concerned the business of driving these trucks and the picketing had been limited in time and area to the primary employer's trucks, the picketing, although near the premises of the secondary employer, was identified solely with the actual functioning of the primary employer's busi-

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<sup>11</sup> *International Brotherhood of Teamsters etc. and Schultz Refrigerated Service, Inc.*, 87 NLRB 502.

ness at the situs of the labor dispute. Accordingly, the Board found that the picketing, so limited, was lawful primary action. On the other hand, in the *Sterling* case,<sup>12</sup> the union, in a situation comparable to the *Schultz* case, *supra*, continued picketing near the premises of the secondary employer after the primary employer's trucks had departed. The Board concluded that by picketing the secondary employer's premises after the primary employer's trucks had left, the union was no longer identifying its picketing with the actual functioning of the primary employer's business at the scene of the labor dispute, but had directed its picketing against the secondary employer. The Board held, therefore, that this picketing was proscribed by Section 8 (b) (4) (A).

In the *Montgomery Fair Co.*, case<sup>13</sup> the primary employer was a carpentry contractor who was involved in a labor dispute with the union. The union followed the primary employer to a department store where he was engaged on a remodeling job. However, in picketing at the department store, Montgomery Fair, the union did not restrict its pressure to the carpentry contractor but stated on its placards: "Montgomery Fair Unfair To Union Labor." The evidence showed that the purpose of this picketing was to force the store to discontinue the services of the primary employer.

<sup>12</sup> *International Brotherhood of Teamsters etc. and Sterling Beverages, Inc.*, 90 NLRB No. 75.

<sup>13</sup> *Local 1796, United Brotherhood of Carpenters etc. and Montgomery Fair Co.*, 82 NLRB 211.



The Board found that the picketing was illegal secondary action because in advertising the store as unfair the union was not publicizing its dispute with the carpentry contractor but was seeking to disrupt the operations of the department store, a neutral. Similarly, in the *Roane Anderson Case*,<sup>14</sup> the primary employer was an electrical subcontractor engaged on a project on which the general contractor, a neutral, and his employees were also engaged. The union in that case took strike action directly against the neutral employer; it called a strike of the general contractor's employees. Since the strike was directed against the general contractor, not the primary employer, and its purpose was to force the general contractor to cease doing business with the subcontractor, the Board held the strike action secondary and therefore unlawful.

In the *Moore Dry Dock case*,<sup>15</sup> the Board set forth at length the criteria which it applies in determining whether picketing and other strike action in common situs cases is primary or secondary. There the primary employer, Samsoc, was a shipowner, whose vessel, the *S.S. Phopho*, involved in the dispute, was moored for repairs at the dry dock of a neutral employer, Moore. The crew members, who were the subject of the labor dispute, were on board the vessel performing various

<sup>14</sup> *Local 760, International Brotherhood of Electrical Workers and Roane-Anderson Co.*, 82 NLRB 696.

<sup>15</sup> *Sailors' Union of the Pacific A.F.L. and Moore Dry Dock Company*, 92 NLRB No. 93.

duties. To press its demands against Samsoc the union established a picket line at the entrance to the Moore shipyards. The pickets carried placards reading "S.S. Phopho unfair to the Sailors' Union of the Pacific, A.F.L." The union had previously requested Moore's permission to place its pickets at the particular dock where the vessel was moored but had been refused. The picketing was as close to the vessel as the pickets could approach under the circumstances. The union also notified the various craft unions representing Moore's employees that the vessel was "hot" and requested their cooperation. Moore's employees, while ceasing work on the vessel, continued to perform all other work throughout the course of the strike. In holding the picketing and direct appeals to the Moore employees to be primary rather than secondary strike pressure, the Board said:

When the *situs* [of the primary dispute] is ambulatory, [the dispute] may come to rest at the premises of another employer. The perplexing question is: Does the right to picket follow the *situs* while it is stationed at the premises of a secondary employer, when the only way to picket that *situs* is in front of the secondary employer's premises? Admittedly, no easy answer is possible. Essentially the problem is one of balancing the right of a union to picket at the site of its dispute as against the right of a secondary employer to be free from picketing in a controversy in which it is not directly involved.

When a secondary employer is harboring the *situs* of a dispute between a union and a primary employer, the right of neither the union to picket nor of the secondary employer to be free from picketing can be absolute. The enmeshing of premises and *situs* qualifies both rights. In the kind of situation that exists in this case, we believe that picketing of the premises of a secondary employer is primary if it meets the following conditions: (a) The picketing is strictly limited to times when the *situs* of dispute is located on the secondary employer's premises; (b) at the time of the picketing the primary employer is engaged in its normal business at the *situs*; (c) the picketing is limited to places reasonably close to the location of the *situs*; and (d) the picketing discloses clearly that the dispute is with the primary employer. [Footnotes omitted.]

The Board concluded that since all of these conditions had been met, the picketing was aimed at Samsoc and was therefore lawful.

**B. THE BOARD HAS PROPERLY APPLIED THESE RELEVANT CRITERIA IN CASES INVOLVING CONSTRUCTION PROJECTS, SUCH AS THIS.**

Building construction cases constitute a large block of the cases in the common *situs* category. Construction work is commonly performed by general contractors and subcontractors, several of whom are at the same time engaged in work on the job. When a labor organization, engaged in a dispute either with the general contractor or with one



or more of the subcontractors, exerts strike pressure at the construction project, the Board applies the criteria set out above to determine whether the picketing is directed only at the primary employer's business or at the business of the neutral employers.

### 1. *The Watson type of case*

If, for example, a union calls a strike of the employees of the general contractor because a subcontractor with whom the union is engaged in a labor dispute is also at work on the job, the strike action is clearly secondary and unlawful. This was the situation in the *Roane Anderson* case, *supra*. The result would be the same if the strike were called among employees of a neutral subcontractor because the general contractor or another of the subcontractors on the project was engaged in a labor dispute with the union. This was the situation in the *Watson* case, No. 85, this Term, where the union called a strike of the carpentry contractor's employees because a nonunion floor covering contractor (Watson) had been engaged to install the floor coverings, an object of the strike being to force Stanley, the owner, to cease doing business with Watson.

### 2. *The Langer and Denver type of case*

If, instead of engaging in direct strike action of this character, a union pickets the project for the

purpose of inducing the employees of neutral employers to strike, the Board considers that this conduct also is barred by Section 8 (b) (4) (A). This is what was done in the instant case (*Denver*) and in the *Langer* case, No. 108, this Term. In both cases the evidence clearly established that the picketing was directed against neutral employers; that it was designed to induce employees of these employers in concert to cease work; and that an object of the picketing was to force the neutral employers to cease doing business with the particular employer involved in the dispute.

The situations presented in the instant case and in Nos. 85 and 108, are thus entirely distinguishable from those presented in the *Ryan*, *Pure Oil*, *Schultz* and *Moore Dry Dock* cases, *supra*, pp. 27-35. In *Ryan* and *Pure Oil* the picketing occurred at the premises of the primary employer and the signs and placards carried by the pickets clearly identified the dispute as being with the primary employer only. The mere presence of the secondary employer at those premises was not enough to transform what was clearly primary pressure into secondary action. Likewise, in *Schultz* and *Moore Dry Dock*, where the premises of the secondary employer were also the temporary situs of the primary dispute, the unions clearly identified their picketing with the primary employer only. In the instant case and in Nos. 85 and 108, on the other hand, the unions by failing entirely to limit their

picketing to the primary employers involved exceeded the bounds of allowable primary pressure.

C. THE BOARD'S FINDINGS THAT THE STRIKE PRESSURE EXERTED IN THE INSTANT CASE WAS SECONDARY AND HAD AS AN OBJECT FORCING A NEUTRAL EMPLOYER TO CEASE DOING BUSINESS WITH THE PRIMARY EMPLOYER ARE SUPPORTED BY SUBSTANTIAL EVIDENCE.

In the instant case, respondents approached the general contractor, a neutral, and threatened to picket the project unless the general contractor ceased doing business with the particular subcontractor with whom respondents were engaged in a dispute. When the general contractor refused to accede to this demand respondents placed a picket in front of the project with a placard reading "This job unfair to Denver Building and Construction Trades Council." When the picketing commenced the unionized employees of the general contractor and the subcontractors ceased work on the project and did not resume until two weeks later when the general contractor acceded to respondents' demand that it cease dealing with Gould & Preisner.

The action of the Council and its affiliates was thus equivalent to calling a strike of the members of the Council's affiliated unions employed by Doose & Lintner, the general contractor, and his subcontractors. It was taken pursuant to the Council's bylaws which empower its Board of Business Agents "to declare a job unfair and remove all men from the job," and authorize the repre-



sentatives of the Council "to order all strikes when instructed to do so by the Council or Board of Agents." The strike was put into effect when Goold; the Council's business agent, acting under its instructions, posted the picket at the Bannock Street project with a placard labelling the job as unfair to the Council. The picket, as Goold had warned Doose & Lintner, served as notice to the union workers on the job to stop work, in compliance with union rules.<sup>16</sup> As the Board properly found (R. 239, 258), therefore, "It is \* \* \* evident that the picket sign announcing that the Bannock Street project was unfair to the Council constituted a clear signal in the nature of an order, to the members of respondent unions, as well as to the members of other unions affiliated with the Council . . . to withhold their services for the duration of the picketing."

It is also clear, as the Board found, that the strike action was directed against Doose & Lintner, the secondary employer, and not merely against Gould & Preisner, the primary employer. The picketing of the Bannock Street project was not limited to publicizing the dispute between respondents and Gould & Preisner, and its non-union employees. No attempt was made to identify the picketing solely with the operations of Gould & Preisner. On

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<sup>16</sup> Cf. the observation of the Court of Appeals for the Ninth Circuit in *Printing Specialties and Paper Converters Union, Local 388 v. Le Baron*, 171 F. 2d 331, 334, "The reluctance of workers to cross a picket line is notorious."

the contrary, the picketing, as the wording of the placard carried by the picket attested, was directed against the entire project and the operations of Doose & Lintner at that site. And the picketing, as respondents' representative informed Doose & Lintner, was designed to enlist the employees of Doose & Lintner and of its subcontractors and thereby disrupt and bring to a halt Doose & Lintner's operations at the building site. The picketing served, as it was expressly intended, as a signal to these employees to strike against Doose & Lintner; after Doose & Lintner capitulated, respondents called off the strike by removing the picket.

Plainly, too, an object of the strike pressure thus exerted by respondents against Doose & Lintner was to compel it to terminate the services of Gould & Preisner on the Bannock Street project. As long as Gould & Preisner refused to unionize its operations, Doose & Lintner could settle the strike only by terminating its contract with Gould & Preisner and removing it from the Bannock Street job. Indeed, this object is implicit in the suggestion made by the representatives of respondent Plumbers, McDonough, to Doose, that if he (McDonough) were a contractor "he probably could get rid of Gould & Preisner," and the statement made by Gould, the Council's representative, to Doose that if Gould & Preisner worked on the job, the Council would picket the job. Moreover, in the light of Gould & Preisner's refusal to unionize its operations and its determination, which was

made known to respondents, to fulfill its contract on the Bannock Street project unless "bodily put off," it is apparent that the strike against Doose & Lintner could have had no other immediate purpose than that of forcing or requiring Doose & Lintner to terminate its business relationship with Gould & Preisner, certainly with respect to the Bannock Street Building. To find otherwise would be to say that "the [strike] order and the effort to enforce it were vain and idle things without any rational purpose whatsoever." *Bedford Cut Stone Company v. Journeymen Stone Cutters' Association of North America*, 274 U.S. 37, 45-46. See also *Printing Specialties and Paper Converters Union v. Le Baron*, 171 F. 2d 331 (C.A. 9). Thus, as the Board justifiably found (R.239, 258), the strike had the planned and expected purpose of denying the services of all union workmen to Doose & Lintner on the Bannock Street job as long as it continued to utilize the services of Gould & Preisner there and of forcing the termination of the business relationship between them, as it in fact did.

## II

RESPONDENTS' CONTENTION THAT IT WAS NOT AN OBJECT OF THE STRIKE ACTION TO FORCE A CESSATION OF BUSINESS BETWEEN TWO PERSONS WITHIN THE MEANING OF THE STATUTE IS WITHOUT MERIT.

In this case and in Nos. 108 and 85, the labor organizations contend, as a matter of law, that where



strike action is taken against one or more contractors on a building project with the ultimate object of unionizing or improving the working conditions of employees of other contractors on the project, the strike action may not be said to have as "an object," within the meaning of the statute, forcing one contractor to cease doing business with another. They also urge that the phrase "doing business with any other person," as used in Section 8 (b) (4) (A), should not be held to apply to the relationship between a general contractor and a subcontractor on a building project, and that all picketing of construction projects, though designed to sever the business relationship between contractors, should be held primary rather than secondary. The labor organizations also contend that when a general contractor brings to a building site a subcontractor with whom the union is engaged in a dispute, the general contractor creates a dispute between himself and the union over employment of the subcontractor and that pressure against the general contractor in these circumstances is to be regarded as primary with respect to the latter. Finally, the unions argue that Section 8 (b) (4) (A) was designed to outlaw only so-called "product boycotts," i.e., refusals to work upon goods produced under union-disapproved conditions, and was not directed at other types of secondary boycotts. To these contentions we now turn.

A. UNDER SECTION 8 (b) (4) (A), WHERE "AN OBJECT" OF SECONDARY STRIKE ACTION IS TO FORCE A CESSATION OF BUSINESS RELATIONS BETWEEN TWO EMPLOYERS, THE STRIKE ACTION IS UNLAWFUL WHETHER OR NOT OTHER OBJECTS ARE ALSO INVOLVED.

The court below in the instant case rejected the Board's finding that an object of the strike action was to force or require Doose & Lintner to cease doing business with Gould & Preisner. It was of the view that the purpose of the Council was to make the Bannock Street project all union and that "accordingly *the* object was not in any literal sense to require Doose & Lintner to cease doing business with Gould & Preisner." (Italics supplied.) Undoubtedly, an ultimate objective of the Council and its affiliates was to make the Bannock Street project wholly union. But, it is clear that they sought to achieve that objective by strike action designed to force Doose & Lintner to remove Gould & Preisner from the project. Under the Act it is enough that *an* object of a strike is to force an employer to cease doing business with another person. Nothing in the terms, purposes, or legislative history of the Act suggests that it must be the sole object.

That the Board has properly construed the deliberate intention of Congress is borne out not only by the text of Section 8(b)(4)(A), but also by its legislative history.<sup>17</sup> Section 8(b)(4) of the

<sup>17</sup> Compiled in *Legislative History of the Labor Management Relations Act, 1947* (Gov't. Print. Off., 1948).

bill which became the Act, as it passed the Senate,<sup>18</sup> made it an unfair labor practice for a labor organization or its agents to engage in strike action, "for the purpose of" accomplishing one or more of the objectives specified in the subdivisions of that section. In conference, the words "where *an* object thereof" were substituted for the words "for the purpose of." [Italics supplied.] In a supplementary analysis of the bill as passed, which Senator Taft, one of the co-authors of the legislation, submitted to the Senate, he explained the reason for the change as follows:

Section 8 (b) (4), relating to illegal strikes and boycotts, was amended in conference by striking out the words "for the purpose of" and inserting the clause "where an object thereof is." Obviously the intent of the conferees was to close any loophole which would prevent the Board from being blocked in giving relief against such illegal activities simply because one of the purposes of such strikes might have been lawful.<sup>19</sup>

<sup>18</sup> H. R. 3020, as passed Senate, 80th Cong., 1st Sess., at pp. 82-83.

<sup>19</sup> 93 Cong. Rec. 6859, *Leg. Hist.*, p. 1623. This explanation was made apparently in answer to Senator Murray who, criticizing Section 8 (b) (4), said, "Let me direct attention to that little word 'an.' For many generations the courts have followed what is known as the primary objectives test; even prior to the passage of the Norris-LaGuardia Act the courts had developed a doctrine that they would look to the primary objective of the strike rather than to all its objectives. Manifestly, different strikers have differing motives; any strike may have several different objects. Those limitations, imposed by the Supreme Court in the early part of the century when it was considered by many to be hostile to the purposes of trade



Accordingly, "It is not a defense that other motives may have entered into the action of the respondent[s]. Section 8 (b) (4) (A) forbids a work stoppage by the union when 'an object thereof' is to require the employer to cease dealing [with] another." *National Labor Relations Board v. Wine, Liquor & Distillery Workers Union*, 178 F. 2d 584, 586 (C. A. 2).

The court below viewed the instant case as one where respondents in effect said to Doose & Lintner, "We will not work with non-union men, and therefore we will not work for you at the place to which you bring Gould & Preisner with non-union men," rather than, "We will not work for you if you do business with Gould & Preisner." (R. 279). But this is, after all, a question of fact for the Board—and, as we have shown above (*supra*, pp. 40-41), the evidence not only does not support this characterization by the court below, but in fact amply justifies the contrary finding made by the Board. Respondents, as the Board found (R. 229, 233, 258), made it amply clear to Doose & Lintner that their purpose was to force Doose & Lintner to get rid of Gould & Preisner and that Doose & Lintner's only escape from the strike called by them lay in a termination of its business arrangement with Gould & Preisner. The court below, had it been sitting as a trier

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unions, is by that single word repealed. We are no longer to look to the primary motive; it is enough if it can be proved that any striker has an improper motive, or that an extremely minor and subsidiary issue in the strike was improper." 93 Cong. Rec. 6497, *Leg. Hist.*, pp. 1569-1570.

of the facts *de novo*, would not have reached the same factual conclusion as the Board; but this does not, of course, justify it in setting aside the finding made by the Board, supported as it is by abundant evidence.

Secondly, even if the lower court's characterization of the evidence were warranted, it would not remove the case from the ban of the statute. For such a characterization involves disregard of the method whereby the union seeks to achieve its ultimate objective—i.e., the forcing of one employer, by total or partial strike action directed against him, to cease doing business with another. It is precisely against the use of such methods to obtain a union's ultimate objective that the statute was aimed. The approach of the court below permits virtually all secondary boycotts to escape the statutory prohibition. For example, suppose employer B operates a non-union shop and for that reason is designated unfair by a union; that B in the course of his business sells his products to employer A for use in the latter's shop; and that A's union employees are directed by their union to refuse to handle, work on or use these products because they are non-union made products. Applying the reasoning of the court below, it could be said with equal validity there, as in the case at bar, that the union was not in effect telling A to cease doing business with B but was merely notifying A that its members would not work on, or use, the non-union products of B, and that, therefore, no violation of Section 8 (b) (4) (A) has occurred.

Yet, Section 8 (b) (4) (A) was specifically designed to make it unlawful for a union, among other things, to refuse, at the premises of a secondary employer, to work on disfavored goods, i.e., "to boycott employer A because employer A uses or otherwise deals in the goods of or does business with employer B (with whom the union has a dispute)." <sup>20</sup> There can thus be no question that such action on the part of the union would run counter to Section 8 (b) (4) (A); and the courts have uniformly so held. <sup>21</sup>

There is no difference between such a situation and the one here, where the union orders A's employees to engage in a strike because A has subcontracted for the services of B instead of purchasing the latter's products. "The phrase 'doing business,' would ordinarily cover doing any business which the third party is free to discontinue, regardless of whether he is merely supplying materials to the employer, or has subcontracted with him to perform part of a work which the third party has himself contracted to do." Chief Judge Learned Hand in *International Brotherhood of Electrical Workers v. National Labor Relations Board*, 181 F. 2d 34, at p. 37. Whenever A's employees are

<sup>20</sup> S. Rep. No. 105 on S. 1126, 80th Cong., 1st Sess., p. 22; See Brief for National Labor Relations Board in No. 313, pp. 27-29, 30-31.

<sup>21</sup> *National Labor Relations Board v. Wine, Liquor & Distillery Workers Union*, 178 F. 2d 584 (C. A. 2); *United Brotherhood of Carpenters, etc. v. Sperry*, 170 F. 2d 863 (C. A. 10); *National Labor Relations Board v. United Brotherhood of Carpenters, etc.*, 184 F. 2d 60 (C. A. 10), pending on petition for certiorari, No. 387, this Term.



ordered to strike because A purchases B's products or because A contracts for B's services, *an* object of the strike is necessarily to force A to terminate his business relations with B, and hence brings it within the express prohibitions of the Act.

**B. THE ACTION OF AN EMPLOYER IN CONTRACTING FOR THE SERVICES OF ANOTHER EMPLOYER WITH WHOM THE UNION IS ENGAGED IN A LABOR DISPUTE DOES NOT GIVE RISE TO A PRIMARY DISPUTE WITHIN THE MEANING OF SECTION 8 (b) (4) (A).**

The court below also stated that Doose & Lintner could not be regarded as a neutral within the meaning of Section 8 (b) (4) (A) because it had been instrumental in bringing Gould & Preisner, with whom the union had a dispute, to the Bannock Street project. It characterized the picketing as primary because "it was aimed at conditions at the site of the picketing for which [Doose & Lintner] was at least in part responsible." This concept of "neutrality," justifiable as it might be in other contexts and for other purposes, is, as applied to Section 8 (b) (4) (A), wholly at variance with the Congressional understanding of that term. The purpose of Congress in enacting Section 8 (b) (4) (A), as we have pointed out (see Brief for the Board in the *Rice Milling* case, pp. 26-32), was to eliminate strikes or the inducement thereof aimed at employers who were "wholly unconcerned in the disagreement" between a union and another employer. The illustrations used by proponents of the bill disclose that by an "unconcerned" em-

ployer Congress meant an employer who is not involved in a labor dispute with his own employees over such matters as union recognition or particular economic issues directly affecting the terms and conditions of employment of his own employees (*ibid.*). In view of the legislative background and purposes of the Act, the Board considers that the mere fact that such an employer, over a union's objection, does business with an employer who is involved in a primary labor dispute does not deprive him of his status as a "neutral" and make him a party to a primary dispute between himself and the union, within the meaning of Section 8 (b) (4) (A). A contrary construction of Section 8 (b) (4) (A) would exempt from the reach of the Act the precise conduct which the legislative history shows it was designed to prevent.

The circumstance that Doose & Lintner may have "created" the situation that immediately resulted in the picketing and the strike would not destroy its status as a "neutral" under Section 8 (b) (4) (A). An analogy will serve to demonstrate this. Suppose that employer A in the course of his business purchases, for use in his plant, machinery made by employer B who operates a non-union shop and that A's employees are ordered to strike because A has brought B's non-union made machinery into the plant. In a sense, it would be true to say that A, by bringing B's machinery into his plant, has created a situation giving rise to a "direct contro-

versy" between A and his employees. But if this be regarded as controlling, the practical effect would be to negate what Congress undoubtedly intended to accomplish. It is clear that what Congress objected to was the use of strikes and boycotts against employers involved in just such controversies as this, and that Section 8 (b) (4) (A) was enacted primarily to put an end to this specific practice. *National Labor Relations Board v. Wine, Liquor & Distillery Workers Union, etc.*, 178 F. 2d 584 (C. A. 2); *National Labor Relations Board v. United Brotherhood of Carpenters and Joiners of America, etc.*, 184 F. 2d 60 (C. A. 10); pending on petition for certiorari, No. 387, this Term; Cf. *Duplex Co. v. Deering*, 254 U. S. 443. We submit that no distinction can be drawn between such a case and one where, as here, instead of bringing B's machinery into his plant, A contracts for B's services at A's place of business.

The court below distinguished the two cases on the ground that in the instant case the picketing and the strike action were "designed to change the situation by bringing about the employment only of union labor on the Bannock Street project" and that they were "aimed at conditions at the site of the picketing for which [Doose & Lintner] was in part responsible." But it can equally be said in the illustration above that by bringing B's machinery into his plant, A has created a condition at the site of the strike for which A is at least in part



responsible and that the strike of A's employees is designed to change the situation by forcing A to discontinue the use of non-union made machinery.

We submit that the two situations are not distinguishable, as the court below further suggested, on the ground that in the one there is geographic separation between the places of business of the two employers, whereas in the other there is no such separation. As we have shown above, pp. 25-35, lack of geographic separation may sometimes make it difficult to determine whether strikes or picketing are primary or secondary, but once it is determined, as it was determined here by the Board, that the strike action is secondary, it falls within the statutory ban, whether or not occurring at premises also shared by the primary employer.

**C. THE ACTION OF AN EMPLOYER IN CONTRACTING FOR THE SERVICES OF ANOTHER EMPLOYER WITH WHOM THE UNION IS ENGAGED IN A LABOR DISPUTE DOES NOT MAKE THE CONTRACTING EMPLOYER A PARTY TO THE EXISTING DISPUTE.**

The labor organizations have also argued that the operations of a general contractor and a subcontractor on any particular construction site where they are engaged are so integrated that the two are in effect "allies," or a single entity, and that the general contractor cannot be regarded as a neutral in any dispute between a union and a subcontractor. But this argument overlooks the fact that although the general contractor and subcontractors work together on the same project they

remain independent, as entrepreneurs and as employers.

A subcontractor, as established by usage in the building trades, "is one who performs for and takes from the prime contractor a specific part of the labor or material requirements of the original contract. . . ." *MacEvoy Co. v. United States*, 322 U. S. 102, 108-109. A subcontractor, like Gould & Preisner here, buys his own materials, has his own labor force, and handles his own labor problems. He is an independent employer and is engaged in a business of his own. He bids for work, usually in competition with others.<sup>22</sup> In these circumstances, it "would do violence to the plain common-sense meaning of the words" used in the statute (*Colvin v. Kokusai Kisen Kabushiki Kaisha*, 72 F. 2d 44, 45 (C. A. 3)), to hold that a subcontractor is not "any other person" in relation to the general contractor<sup>23</sup> and that the two are not

<sup>22</sup> Haber, William, *Industrial Relations in the Building Industry* (1930), pp. 57-58; Twentieth Century Fund, *How Collective Bargaining Works* (1942), pp. 193-194; Hearings before the Temporary National Economic Committee, Investigation of Concentration of Economic Power, 76th Cong., 1st Sess., pp. 5177-5183.

<sup>23</sup> In the court below respondents, in support of their contention that a general contractor and subcontractors are to be regarded as a unified business enterprise, called attention to various decisions under various workmen's compensation statutes and public works laws holding that a general contractor with respect to the employees of a subcontractor is not a person other than their employer. *E.g., Jennings v. Vincent's Adm'r*, 234 Ky. 614, 145 S. W. 2d 537; *McEvilly v. L. E. Myers Co.*, 211 Ky. 31, 276 S. W. 1068; *Leebolt v. Leeper*, 128 Kans. 61, 275 P. 1087; *Bogoratt v. Pratt & Whitney Aircraft*

"doing business" with one another.<sup>24</sup>

Doose & Lintner was a separate and distinct enterprise from Gould & Preisner. Except for the general direction which a prime contractor normally exercises over the operations of a subcontractor on a particular construction job, it had no control over Gould & Preisner. Of course, in one sense, joint participation in a particular construction project makes the contractors "allies." But, in the same sense, the economic system also makes a manufacturer and his suppliers, or distributors, "allies." There can be little doubt, however, that the manufacturer is "doing business" with his suppliers or distributors and that the latter are "other persons," in the statutory sense. Neither the words nor the purpose of the statute permit a distinction to be drawn between a manufacturer and his suppliers or distributors on the one hand, and a general contractor and a subcontractor on the other. In

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Co., 114 Conn. 126, 157 A. 860; *Bunner v. Patti*, 343 Mo. 274, 121 S. W. 2d 153. But cf. *Colvin v. Kokusai Risen Kabushiki Kaisha*, 72 F. 2d 44 (C. A. 5), and cases cited there. These statutes are without significance here for, as the cases decided thereunder recognize, they are remedial legislation in which the State, as a matter of public policy, has swept aside distinctions based on the identity of the employer in order to give the most complete protection possible to the employees. See, e. g. *Cermak v. Milwaukee Air Power Pump Co.*, 192 Wis. 44, 211 N. W. 354; *Bailey v. Mosby Hotel Co.*, 160 Kans. 258, 160 P. 2d 701; *Halpin v. Industrial Commission*, 319 Ill. 130, 149 N. E. 764; *Bello v. Notkins*, 101 Conn. 34, 124 A. 831; 48 Col. L. Rev. 1253.

<sup>24</sup> Dennis, William L., *The Boycott in Labor Disputes*, New York University Second Annual Conference on Labor (1949), p. 471.



each case two separate and distinct enterprises are dealing with each other; by any standard, they are "doing business" with each other. "We cannot see why it should make any difference that the third person is engaged in a common venture with the employer, or whether he is dealing with him independently. The phrase, 'doing business,' would ordinarily cover doing any business which the third party is free to discontinue, regardless of whether he is merely supplying materials to the employer, or has subcontracted with him to perform part of a work which the third party has himself contracted to do. The third party cooperates as truly with one to whom he furnishes materials as with a subcontractor. Indeed, when the coercion is upon the third person to break a contract with the employer, his position is more embarrassing than if he may discontinue his relations with the employer without danger of liability. The phrase, 'cease doing business,' is general and admits of no such evasion." *International Brotherhood of Electrical Workers v. National Labor Relations Board*, 181 F. 2d 34, 37 (C. A. 2).

It may be true that the integration between the operations of the general contractor and the subcontractor, engaged on a common construction project, creates a greater degree of economic interdependence between the employees on the one hand and the employers on the other<sup>25</sup> than exists

<sup>25</sup> Restatement, Terts, Vol. IV, Sec. 799, Comment on Clause (d).

in the case of a manufacturer and his suppliers or distributors. But Congress did not make the application of the Act turn upon presence or absence of economic interdependence between employers and employees; it chose instead to make the test the existence of an independent business relationship.

During the course of the legislative debate, Section 8 (b) (4) (A) was criticized<sup>26</sup> because it indiscriminately prohibited secondary strikes, or the inducement of employees to engage in such strikes, regardless of the "community of interest"<sup>27</sup> that might exist between the employees of the primary and secondary employer or the "unity of interest" between the primary and secondary employer.<sup>28</sup> In some jurisdictions application of

<sup>26</sup> 93 Cong. Rec. 4196-4197, 4844-4845, 4859, *Leg. Hist.*, pp. 1104-1105, 1106-1107, 1366-1368, 1371; see also the President's veto message, *Leg. Hist.*, p. 918.

<sup>27</sup> The concept of "community of interest" between such workers finds expression in the dissenting opinion of Mr. Justice Brandeis in *Duplex Co. v. Deering*, 254 U. S. 443, 480, which Senator Pepper, who opposed Section 8 (b) (4) (A), quoted in the course of the legislative debate, 93 Cong. Rec. 4197, *Leg. Hist.*, p. 1104.

<sup>28</sup> This "unity of interest" concept has been phrased as follows by the New York Court of Appeals in *Goldfinger v. Feintuch*, 276 N. Y. 2-1, 11 N. E. 2d 910, 913:

Within the limits of peaceful picketing, however, picketing may be carried on not only against the manufacturer but against a nonunion product sold by one in unity of interest with the manufacturer who is in the same business for profit. Where a manufacturer pays less than union wages, both it and the retailers who sell its products are in a position to undersell competitors who pay the higher scale, and this may result in unfair reduction of the wages of union members. Concededly the defendant union would be entitled to picket peacefully the plant of the manufacturer. Where the manufacturer disposes of the product through retailers in unity of interest with it,

these common law concepts had resulted in legalizing some secondary strike pressures. For example, some courts held that strike action against a general contractor on a building project because he had engaged the services of a non-union subcontractor did not constitute a "secondary boycott" and was therefore lawful.<sup>29</sup> Other courts rejected these concepts and held that such strike action directed against the general contractor in order to compel him to get rid of the non-union subcontractor was an unlawful secondary boycott.<sup>30</sup> Con-

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unless the union may follow the product to the place where it is sold and peacefully ask the public to refrain from purchasing it, the union would be deprived of a fair and proper means of bringing its plea to the attention of the public.

<sup>29</sup> Typical of these decisions is the holding in *Gray v. Building Trades Council*, 91 Minn. 171, 97 N. W. 663.

Accord: *Cohn & Roth Electric Co. v. Bricklayers', etc., Local Union No. 1*, 92 Conn. 161, 101 Atl. 659; *Grant Construction Co. v. St. Paul Building Trades Council*, 136 Minn. 167, 161 N. W. 520.

<sup>30</sup> Holding that such strike action was an unlawful secondary boycott, the Seventh Circuit Court of Appeals, in language closely paralleling Senator Taft's illustration of the evil against which Section 8 (b) (4) (A) was directed (See Brief for the National Labor Relations Board in No. 313, pp. 30-31), said (*International Brotherhood of Electrical Workers, Local Union No. 134 v. Western Union Telegraph Co.*, 6 F. 2d 444, 445):

The things that were done were not done because of any violation by the employer of any term of the contract of employment. They were not done to induce the payment of higher wages, better working conditions, or for any other lawful purpose. But they were done to compel their own perfectly satisfactory employers, or the owners of the premises where appellee was doing or desired to do its installation work, to injure and annoy appellee, and to cause such employers to violate contracts with appellee for the sole reason that appellee employed nonunion men.

Accord: *Pickett v. Walsh*, 192 Mass. 572, 78 N.E. 753; *Blandford v. Duthie*, 147 Md. 388, 128 Atl. 138; *Lehigh Structural Steel Co. v. Atlantic Smelting & Refining Works*, 92 N. J. Eq.



gress deliberately refused to predicate distinctions upon these concepts. Senator Taft made it clear that Section 8 (b) (4) (A) contemplated no distinction with respect to secondary strike action based on these concepts and that the purpose of the Section was to outlaw all strike action aimed and directed immediately against an employer whose only connection with a labor dispute lay in the circumstance that he was doing business with an employer directly involved in such a dispute. He said:<sup>31</sup>

The difficulty with the Clayton Act and the Norris-LaGuardia Act is that they went at the situation with a meat ax. They practically eliminated all legal remedy against unions for any action taken by them. In effect they provide as construed by the courts, at least—that any action by a union taken in order to advance its own interests is proper, and there is no legal recourse against the union. The laws referred to do not discriminate between strikes for justifiable purposes and strikes for wholly illegal and improper purposes. They do not distinguish between strikes for higher wages and hours and better working conditions, which are entirely proper and which throughout this bill are recognized as completely proper strikes, and strikes in the nature of secondary boycotts \* \* \*. The

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131, 111 Atl. 376; *Snow Iron Works, Inc. v. Chadwick*, 227 Mass. 382, 116 N. E. 801; *Jetton-Dekle Lumber Co. v. Mather*, 53 Fla. 969, 43 So. 590.

<sup>31</sup> 93 Cong. Rec. 3835, 4198, *Leg. Hist.*, pp. 1005-1006, 1106.

acts simply eliminated all remedy against any union, leaving the union leaders free, practically without any control even by their members, to order strikes and boycotts and various kinds of actions that interfered, I believe certainly unlawfully under common law, with the activities of many other persons who were entirely innocent.

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This provision makes it unlawful to resort to a secondary boycott to injure the business of a third person who is wholly unconcerned in the disagreement between an employer and his employees. The Senator [Pepper] will find a great many decisions written by my father which hold that under the common law a secondary boycott is unlawful. Subsequently, under the provisions of the Norris-LaGuardia Act, it became impossible to stop a secondary boycott or any other kind of a strike, no matter how unlawful it may have been at common law.

All this provision of the bill does is to reverse the effect of the law as to secondary boycotts. *It has been set forth that there are good secondary boycotts and bad secondary boycotts. Our committee heard evidence for weeks and never succeeded in having anyone tell us any difference between different kinds of secondary boycotts. So we have so broadened the provision dealing with secondary boycotts as to make them an unfair labor practice. [Italics added.]*

In sum, Congress enacted a blanket prohibition against all strike pressures directed against em-

ployers other than those immediately involved in a labor dispute without regard to such distinctions as community or unity of interest.<sup>32</sup> Accordingly, the phrase "doing business with any other person" contained in Section 8 (b) (4) (A) permits no limitation based upon these concepts which would exclude from the reach of the statute the business relationship between a contractor and a subcontractor.

An argument, analogous to that urged here, was made in *National Labor Relations Board v. Wine, Liquor & Distillery Workers Union, etc.*, 178 F. 2d 584 (C. A. 2). It was asserted there that the distributors who, in part, or exclusively, handled the products of the primary employer were in an economic sense "allies" and that therefore they could not be regarded as "neutrals" in a dispute involving the primary employer. Rejecting this contention, the Court of Appeals for the Second Circuit said (at p. 587):

The respondent makes the further defense to the enforcement order that the distributors were so-called "allies" of Schenley and that

<sup>32</sup> This is not to say that Section 8 (b) (4) (A) forecloses strike pressure against an employer who, though separate in form, is found to be in actuality merely the *alter ego* of the primary employer. This was the situation presented in *Douds v. Metropolitan Federation of Architects, etc.*, 75 F. Supp. 672 (S. D. N. Y.). As the Second Circuit Court of Appeals said of the *Douds* case, there "the supposititious third person was only a disguise for the [primary] employer." *International Brotherhood of Electrical Workers v. National Labor Relations Board*, 181 F. 2d 34, 38. See also *National Union of Marine Cooks & Stewards (Irwin-Lyons Lumber Co.)*, 83 NLRB 341.



their trade relations with it were so intimate that there was a community of interest which justified a strike as fully as though all the employees had belonged to the same company. This is a far-fetched argument, for the distributors had no relations with Schenley other than as independent corporations whose purchases for the market were largely of Schenley products.

Although the relationship between a general contractor and a subcontractor was not specifically referred to by the proponents of the legislation as one which would constitute "doing business" with any other person within the meaning of Section 8 (b) (4) (A), there is no reason to believe that Congress intended to treat that relationship any differently from the relationship existing between a manufacturer and his suppliers or distributors.<sup>33</sup> The conscription of Doose & Lintner's employees into the dispute between respondents and Gould & Preisner enlarged the area of economic conflict in precisely the manner which Congress sought to prevent. The Board's

<sup>33</sup> It is noteworthy that Senator Murray, who opposed Section 8 (b) (4) (A), understood it to mean, without challenge from the sponsors of the Act, that "It would be unlawful for the union workers to refuse to work next to nonunion workers of another employer engaged in a common project" (93 Cong. Rec. 4845, *Leg. Hist.*, p. 1367). Read in the context of Section 8 (b) (4) (A) and Section 13 of the Act we interpret this statement to mean that in Senator Murray's opinion it would be unlawful under Section 8 (b) (4) (A) for a labor organization to engage in, or to induce or encourage employees to engage in a strike or a concerted refusal to perform services for their employer because of the presence of a non-union employer on a common project, such as the construction job here.

conclusion that the protection of Section 8 (b) (4) (A) extends to an employer like Doose & Lintner is therefore entirely warranted.

Apart from the asserted economic interdependence between the general contractor and subcontractors, the only consideration which has been advanced to support the contention that a general contractor should not be regarded as "another person" in a dispute between a union and a subcontractor is that a contrary view would permit general contractors to purchase immunity from strike pressure against themselves by engaging non-union subcontractors to perform work which, if performed by the general contractor with non-union labor directly, would subject him to permissible strike pressure.<sup>34</sup> To this there are two answers. First, under the statute as construed by the Board, strike pressure may properly, in such cases, be brought to bear upon the subcontractor; thus, the employment of a subcontractor does not immunize the performance of work under union-disapproved conditions from economic pressure.<sup>35</sup> Secondly, if

<sup>34</sup> *Mills v. United Ass'n of Journeymen and Apprentices*, 83 F. Supp. 240 (W. D. Mo.); see also dissenting opinion of Clark, J. in *International Brotherhood of Electrical Workers v. National Labor Relations Board*, 181 F. 2d 34, 41 (C.A. 2).

<sup>35</sup> The discussion assumes that the strike pressure has for its ultimate object inducing non-union employees to join the union, or otherwise improving working conditions of employees whom the union represents. Strike pressure designed to force an employer, a majority of whose employees are not members of the union, to force his employees against their will to join is made unlawful in any event by Section 8 (b) (2) of the Act. *Denver Bldg. & Construction Trades Council (Henry Shore)*, 90 NLRB 224.

this were not true, the unions' argument could, in any event, appropriately be addressed only to Congress, not the Board or the courts. Undoubtedly, a prohibition against picketing of a general contractor in the circumstances of this case blunts a weapon traditionally utilized by unions, but in Section 8 (b) (4) (A) Congress undertook "to sweep within its prohibition an entire pattern of industrial warfare deemed by Congress to be harmful to the public interest" and "to prohibit altogether or sharply curtail the use by labor organizations of certain economic weapons which they have heretofore freely employed." *Printing Specialties and Paper Converters Union v. LeBaron*, 171 F. 2d 331, 334 (C. A. 9); cf. *National Labor Relations Board v. Wine, Liquor & Distillery Workers Union, etc., Workers Union*, 178 F. 2d 584, 587 (C. A. 2). The immunity which a general contractor acquires by employing subcontractors is no different or greater than that which a manufacturer may acquire by obtaining his supplies from a non-union supplier of materials instead of producing these supplies himself with non-union labor. Congress clearly intended to insulate such a manufacturer from secondary strike pressure regardless of how onerous the consequences might be for a union. There is no reason to suppose that Congress meant to afford to unions engaged in the construction industry greater latitude than it accorded to other unions or that it intended to grant less protection to employers in the construction industry than in



other industries. The fact that the general contractor, like any other employer, has power to immunize himself from strike pressure directed against him by controlling the allocation of production does not invalidate the statutory distinction. Cf. *Gray v. Powell*, 314 U. S. 402, 413-414.<sup>36</sup>

D. THE APPLICATION OF SECTION 8 (b) (4) (A) IS NOT LIMITED TO SO-CALLED "PRODUCT BOYCOTTS".

The labor organizations also assert that in any event Section 8 (b) (4) (A) is designed to prohibit solely what is described as a product boycott, that is a strike or the inducement of a concerted refusal by employees to perform services, in order to compel their employer to cease using, selling, handling, or otherwise dealing in the products of an employer involved in a labor dispute; that the words "or cease doing business with any other person" refer to a refusal to handle the products of another employer; and that therefore Section 8 (b) (4) (A) has no application to a contractor and subcontractors because the former buys no products from the latter but merely "hires" or "employs" the services of the latter. The plain words of the

<sup>36</sup> Cf. *Giboney v. Empire Storage & Ice Co.*, 336 U. S. 490, where the Court upheld the constitutionality of limitations on picketing designed to force the ice company, in violation of Missouri's restraint of trade statute, to agree not to sell to non-union peddlers whom the union was seeking to organize. Although the economic position of the vendors was little different from that of employees, the ice company was afforded a measure of protection under the statute that it could not have enjoyed if, instead of selling ice to peddlers, it had used the services of employees to sell and distribute its ice.

statute preclude reading any such limitation into it. On the unions' interpretation, the phrase "or to cease doing business with any other person" (italics supplied) becomes mere surplusage. In the absence of countervailing considerations the word *or* "merits its normal disjunctive meaning, i.e., introductive of an alternative . . . ." *Gay Union Corporation v. Wallace*, 112 F. 2d 192, 196 (C. A. D. C.). The legislative history of the Act (Brief for the Board in No. 313, pp. 27-28), confirms the textual reading of Section 8 (b) (4) (A) and establishes that Congress intended the clauses in the Section introduced by the disjunctive "or" not to be limited so as to leave outside its scope a business relationship between two separate business enterprises which does not involve the sale, use, or handling of products.

**E. THE BOARD'S CONSTRUCTION AND APPLICATION OF SECTION 8 (b) (4) (A) IN COMMON SITUUS CASES HAS A REASONABLE BASIS IN LAW AND SHOULD BE SUSTAINED.**

As we have indicated, the problem in cases such as this, where a secondary employer "is harboring the situs of a dispute between a union and a primary employer,"<sup>37</sup> is to draw a line between the right of neutrals to be free from strike pressures, and the preservation of the union's right to engage in strike action against primary employers. "That task has been assigned primarily to the agency created by Congress to administer the Act." *Na-*

<sup>37</sup> *Moore Drydock, supra*, p. 35.

*tional Labor Relations Board v. Hearst Publications*, 322 U. S. 111, 130. Section 8 (b) (4) (A) does not "undertake the impossible task of specifying in precise and unmistakable language each incident which would constitute an unfair labor practice" under that section. The Act leaves to the Board, in the "empiric process<sup>38</sup> of administration" (*Phelps Dodge Corporation v. National Labor Relations Board*, 313 U. S. 177, 194), the task of applying the section's "general prohibitory language in the light of the infinite combinations of events which might be charged as violative of its terms." *Republic Aviation Corporation v. National Labor Relations Board*, 324 U. S. 793, 798. And, "where the question is one of specific application of a broad statutory term in a proceeding in which the agency administering the statute must determine it initially, the reviewing court's function is limited. . . . The Board's determination . . . is to be accepted if it has 'warrant in the record' and a reasonable basis in law." *Hearst case, supra*, 131. The test on review is "reasonableness and not rightness."<sup>38</sup> Accord: *Gray v. Powell*, 314 U. S. 402, 412-413; *Rochester Telephone Corporation v. United States*, 307 U. S. 125, 146; *Unemployment Compensation Commission of Alaska v. Aragon*, 329 U. S. 143, 153-154; *Cardillo v. Liberty Mutual Co.*, 330 U. S. 469, 477-

<sup>38</sup> Davis, *Scope of Review of Federal Administrative Action*, 50 Col. L. Rev. 559, 572.



478; *Securities and Exchange Commission v. Chenery Corporation*, 332 U. S. 194, 207.

Pertinent here is the observation of this Court in *Addison v. Holly Hill Fruit Products, Inc.*, 322 U. S. 607, 611:

What was said in another connection is relevant here. "Looked at by itself without regard to the necessity behind it the line or point seems arbitrary. It might as well or nearly as well be a little more to one side or the other. But when it is seen that a line or point there must be, and that there is no mathematical or logical way of fixing it precisely, the decision of the [Administrator] must be accepted unless we can say that it is very wide of any reasonable mark." Mr. Justice Holmes, dissenting, in *Louisville Gas Co. v. Coleman*, 277 U. S. 32, 41.

## CONCLUSION

For the reasons stated, it is respectfully submitted that the judgment below should be reversed, and the Board's order enforced.

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FEBRUARY, 1951.

## APPENDIX

The relevant provisions of the Labor Management Relations Act, 1947 (61 Stat. 136, 29 U. S. C., Supp. III, 141, *et seq.*), are as follows:

\* \* \*  
 "SEC. 8. \* \* \*

\* \* \*  
 "(b). It shall be an unfair labor practice for a labor organization or its agents—  
 \* \* \*

"(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is: (A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person; \* \* \*





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**NO. 393**

**IN THE**  
**Supreme Court of the United States**

**OCTOBER TERM, 1950**

**NATIONAL LABOR RELATIONS BOARD, PETITIONER**

**v.**

**DENVER BUILDING AND CONSTRUCTION TRADES COUNCIL;  
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS,  
A. F. OF L., LOCAL 68; AND UNITED ASSOCIATION OF JOUR-  
NEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE  
FITTING INDUSTRY OF THE UNITED STATES AND CANADA,  
A. F. OF L., LOCAL NO. 3**

**MEMORANDUM FOR RESPONDENTS**

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*Of Counsel.*

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*Counsel for Respondents.*





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FITTING INDUSTRY OF THE UNITED STATES AND CANADA,  
A. F. OF L., LOCAL NO. 3

---

**MEMORANDUM FOR RESPONDENTS**

---

Respondents do not oppose the grant of certiorari herein in the event this Court should conclude that there is a substantial conflict between the decision below and that of the Court of Appeals for the Second Circuit in *International Brotherhood of Electrical Workers v. N. L. R. B.* 181 F. (2) 34. However, it is questionable whether there is such a conflict. In the present case Respondents had never been able to organize Gould and Preisner, the electrical sub-contractors (R. 220-221; 132) and picketed and boycotted the job for that purpose while the non-union electricians were on the job. This activity was thus primary in char-

acter. On the other hand, in the *Electrical Workers* case *supra*, the non-union electricians *were not on the job* at the time of the picketing. Chief Judge Learned Hand pointed this out:

"The work of the employer may be so enmeshed with that of the third party that it is impossible to picket one without picketing the other. The case at bar might have been of that sort, *had Langer's non-union employees been at work on the job*, and Patterson's only purpose been to induce them to quit." (*Int. Broth. of Electrical Workers v. N. L. R. B.* 181 F. (2) 34, 37. *Italics ours*).

We think the above distinction adequately differentiates the two cases. If so, while certiorari might readily be granted in the *Electrical Workers* case (on its own merits), there is no need to grant it in the present case, wherein the decision seems essentially right. Sec. 8 (b) (4) (A) of the Taft-Hartley Act cannot be distorted into class legislation aimed at the craft unions which can picket and otherwise exert lawful pressure only at the job while the non-union men are at work. If injury to the prime contractor would under these circumstances destroy the right to picket, Sec. 8, thus construed, would prevent craft unions picketing at all in any effective manner and the Act clearly did not so intend. Also, it would violate the free-speech protections of the First Amendment and Section 8(c) of the Act.

We also invite this Court's attention to the fact that in the present case there are two independent grounds of decision adequate to support the judgment below. The Court below refused to disturb the assertion of jurisdiction by the Board as to interstate commerce, a putative 65 per cent of \$348.55 of materials (Op. below R. 267) though it said "decision in this regard is a close one." (R. 267). Likewise, the Court below overruled Respondent's plea of *res judicata* as to lack of interstate commerce, the District Court in Colorado having so held in injunctive proceedings

pending final adjudication by the Board. (Op. below, R. 270-1).

In the event this Court should grant certiorari herein we propose to argue the Court below was in error in both these rulings.

Respectfully submitted,

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NEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE  
FITTING INDUSTRY OF THE UNITED STATES AND CANADA,  
A. F. L., LOCAL NO. 3.**

**ON WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

**BRIEF FOR RESPONDENTS**

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**ON WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

**BRIEF FOR RESPONDENTS**

**QUESTIONS PRESENTED**

1. Whether the picketing herein violated Sec. 8(b)(4)(A) of the National Labor Relations Act as amended.
2. Whether the acts done affected Interstate Commerce within the meaning of the act, and hence whether the Board had jurisdiction.
3. Whether the decision of the United States District Court for Colorado holding in injunction proceedings

brought by the Board that the matters involved were "purely local" and did not affect Interstate Commerce and hence the Board had no jurisdiction, did not render the question of jurisdiction *res judicata* in so far as further proceedings by the Board or the Courts were concerned.

## SUMMARY OF ARGUMENT

### I

Doose & Lintner, the general contractor, and Gould & Preisner, the non-union electrical sub had a common project for the work at the Bannock Street job: the general contractor to obtain, and the sub to furnish, cheap non-union electrical labor at 42½ cents an hour below union rates, on an otherwise all-union job. When at first approached by the Building Trades Council the general contractor pretended the job was all-union but later admitted that Gould & Preisner, a non-union shop carried on the Council's Unfair List for more than ten or fifteen years, "might do the job." The Council's representative answered that in that event the Council would have to inform their union workers by picketing the Bannock Street job; that union men would not work side by side with non-union men. The general contractor thereupon, in anticipation, moved the union men over to another of his jobs and picketing commenced at the Bannock Street job while the non-union men alone were working there. It continued for two weeks when the general contractor terminated its arrangement with the non-union sub on the ground that their men "were



unable to perform services" while the union men were at work.

Petitioner, Respondent and the Court below all have adopted the same test to ascertain whether the union's action was proscribed by Sec. 8(b)(4)(A), namely, was the action primary or secondary in character. If the latter the presence of a neutral is required. Respondents contend that under the above circumstances the general contractor was not a neutral; that it was at least in part responsible for conditions at the Bannock Street job; that its object was to obtain cheap non-union electrical work, which object it in part achieved by moving the union workers to other jobs and having the non-union electrical workers continue on the job for two weeks in spite of the picket. The picketing was against the general contractor and the sub inseparably; the job itself was unfair, as the placard stated. Congress cannot be deemed to have intended in Sec. 8(b)(4)(A) to prohibit this familiar pattern of union activity on the Board's theory that it was a secondary boycott. The union's activity had primary objectives both as to the general contractor and the sub. As the Court below held "The purpose of the Council was to render the particular job all union." The union did not strike to force the general contractor to cease doing business with the sub. The sub was eliminated when the general contractor realized it could not force union men to work with non-union men on the same job, an undoubted right of labor as long as it is free, and a right protected by Sec. 13 of the Act. The elimination of the sub was merely the incidental result of

the exercise of the traditional right of union workers to choose their work-mates.

Where the Building Trades are concerned, picketing to be effective must be on the job, while the job is in progress. This is conceded by the Board, but the Board claims the present picketing must be viewed askance because the placards did not isolate the sub as the object of the picketing. The Board's argument ignores the fact that the *job itself* was unfair, that there was a common program on the part of the general contractor and the sub: the one to obtain, the other to afford, cheap non-union labor on an otherwise all-union job. If under these circumstances labor cannot retaliate by a one-man picket carrying a placard "This job unfair", etc., its rights are indeed diminished by Sec. 8(b)(4)(A) and the right to strike under Sec. 13 is substantially impaired by the unnecessarily harsh rule contended for by the Board.

## II

The Board had no jurisdiction as the labor activities herein did not "affect commerce." The District Court, in injunction proceedings, so held. In spite of this decision the Board persisted in taking jurisdiction. The project was a small local construction job. There was no proof at all that any of the materials used therein had an out-of-state origin. However, Gould and Preisner's total purchases of raw materials amounted to \$86,560.30 of which \$55,745.25, or 65 per cent were purchased outside the state. Gould and Preisner used \$348.55 worth of materials on the job. The Board argued that 65 per cent thereof must have

come, theoretically, from outside the state. On this basis of inference, together with Gould & Preisner's annual inflow of out-of-state materials, the Board took jurisdiction.

With respect to the firm's annual inflow of out-of-state materials, the Board has held in various other cases that purchases of out-of-state materials in amounts exceeding \$50,000 involve too low a figure for jurisdictional purposes. In fact the Board in its press release dated October 6, 1950 served notice that a direct inflow of out-of-state materials valued at \$500,000 or more was required. The Board's policy, so announced, is more than a free expression of its preference. It constitutes an administrative construction of the Act to avoid its unwarranted application to purely local matters. In the present case the repercussion on interstate commerce seems clearly *de minimis*.

### III

As indicated above the Board applied to the U. S. District Court for Colorado for injunctive relief under Section 10 (1) of the Act. The facts were fully developed but the Court held the activities were "purely local" and did not affect interstate commerce. It therefore dismissed the complaint and the Board abandoned its appeal. Respondents thereupon pleaded *res judicata* as to lack of interstate commerce.

The court below, one judge dissenting, rejected the defense on the ground that the scheme of the Act contemplated that the Board should have two remedies—one by interim injunctive relief, the other after final action by the



Board or the courts. Hence the majority below held that a decision in the injunction proceedings as to interstate commerce was not *res judicata* of this question before the Board.

The court below overlooks the fact that Congress intended the Board to have the two remedies *only in the event interstate commerce was involved*. Where a District Court has held it was not involved the question is *res judicata*. Congress intended the Act to be enforced not outside but inside the general law of the land and the latter includes the doctrine of *res judicata*. This court has held that jurisdictional rulings made on motions are just as final for the purposes of *res judicata* as any other court decisions.

## I

### **The Picketing and Other Labor Action Herein Was Primary and Not Secondary**

#### **A. Doose & Lintner Were Not "Neutral":**

The Board's argument at pp. 21-35 is bottomed upon its claim that Doose & Lintner, the general contractor, was a "neutral." This is not the fact. Doose & Lintner constructed the building by means of numerous sub-contractors. (R. 87). Mr. Lintner assured the Building Trades Council on January 8 that the Bannock Street project was an all union job. (R. 90). However, in the same conversation Mr. Lintner stated Gould & Preisner, a non-union shop which had resisted unionization for many years (R.

132), might do the electrical work. (R. 91, 229)<sup>1</sup>. The union representative replied that in that event he would have to notify the union men of this fact by picketing; that union, and non-union men could not work together on the same job. (R. 91-92). Doose & Lintner ignored the warning and the union men followed standard practice in this area and refused to work side by side with non-union men.<sup>2</sup> Doose & Lintner assigned the union men to other work from January 9 through January 22, 1948 (R. 230, 266, 273); during this time Gould & Preisner's non-union electricians worked on the job and were continually picketed. (R. 273). Around January 23, Doose & Lintner notified Gould & Preisner that their services were terminated "as your employees are unable to perform services while the employees of other sub-contractors are working on the premises." All-union labor was thereafter employed, the picketing ceased and the job was completed. (R. 273).

Doose & Lintner were obviously not "neutral" as the Government assumes in its brief (p. 21). It was a party to a labor dispute and indeed produced the dispute after fair warning. Doose & Lintner was not, in Senator Taft's words, "a third person who is wholly unconcerned in the disagreement." (Apr. 29, 1947, Congr. Rec. p. 4323, Vol. 93).

<sup>1</sup> As a matter of fact Doose & Lintner had already, as far back as September 25, 1947, let out the electrical work to Gould & Preisner. (Findings of Fact, R. 227). The latter began preliminary work October 21, 1947, but did not commence extensive activities until January 8, 1948. (R. 227-228). During November and December the union warned Gould & Preisner that their electricians would be the only non-union men on the job and that under these circumstances the job could not progress. Gould & Preisner refused to do anything about the situation (R. 228); likewise Doose & Lintner did nothing.

<sup>2</sup> Union by-laws and regulations provide that no union men can work on a picketed job. (R. 230).

By flouting the union it stood to have the electrical work done 42½ cents an hour cheaper than if done by union electricians. (R. 169, 221). Doose & Lintner and the non-union electrical sub-contractor, Gould & Preisner, were not merely "allies" as held in *Douds v. Metropolitan Federation*, 75 F. Supp. 672, and *Mills v. United Assn.*, 83 F. Supp. 240; they were partners, for mutual self-interest, in anti-union activity. As the Court below held, "Doose & Lintner were not neutral. It brought Gould & Preisner with the non-union labor onto the job. This brought the Council and Doose & Lintner into direct controversy." (R. 279). Likewise, as the Court said, the picketing was aimed at conditions at the site for which Doose & Lintner was at least in part responsible. (R. 280).

Doose & Lintner, not being neutral, the present case presents none of the complications through which the Board attempts to steer a difficult path. (Brief p. 14-16). The Board's "criteria" (Brief p. 15) never came into play. There being no neutral there could be no secondary boycott; all union action was primary in character. We refer to the opinion below (R. 273-277) to demonstrate that Sec. 8(b)-(4)(A) insofar as here applicable was intended to outlaw secondary boycotts and not to prevent primary strike action, the right to which is guaranteed by Sec. 13 of the Act. The Board's Brief herein adopts the test of primary or secondary action.

**B. The Picketing Had Valid Objectives Both as to Doose & Lintner and Gould & Preisner:**

Doose & Lintner had four other sub-contractors, all unionized (R. 87) and gave the Building Trades' Council to



understand the entire job was union (R. 90, 227-8). Instead, the electrical work was let out at low non-union rates to Gould & Preisner, which had resisted unionization for ten or fifteen years (R. 132) and was on their "Unfair List" during all that time. (R. 220). Doose & Lintner knew the union rule against union men working side by side with non-union men (R. 91) but apparently was willing to take the chance in order to get the cheaper non-union electricians.

It seems incredible that Congress ever intended to prevent the Council picketing Doose & Lintner under these circumstances. The placard "This Job Unfair to Denver Building and Construction Trades Council" publicized Doose & Lintner's breach of faith and deceitful statement that the job was all union. It would be justified on this ground alone or on the ground of sheer resentment, or to teach Doose & Lintner a lesson in fair dealing. If these are not valid objectives under Free Speech, there are sound economic reasons. The Electrical Workers' union is a member of the Building Trades Council (R. 220). Is the Council compelled to watch cheap non-union electricians take the job away from members of its own Electrical Workers union? Does the law require its other union workers on the job—the bricklayers, the cement workers, the steel workers, the plumbers (R. 87)—to continue to work side by side with the non-union electricians? Or is it not a valid and traditional union activity to picket the job as unfair and thus serve notice not only to Doose & Lintner but on all other contractors that total unionization cannot

be circumvented by the device of having a non-union subcontractor<sup>1</sup>.

As to Gould & Preisner, the Council had tried to unionize them for ten or fifteen years. (R. 132). The Council had never succeeded but Sec. 13 of the Act safeguards its right to make the attempt. Pickets with placards bearing the word "Unfair" have been traditional in organizational activity for over a century. If Gould & Preisner chose to become unionized the picketing would cease. Thus the picketing was designed to produce direct action from one of the parties picketed and hence was primary in character. It must be remembered the union did not picket either contractor, at its place of business; the pressure was on the *job*; if conditions on the job were cured the pressure would cease.

### **C. A Craft Union Must Picket the Job or Not Picket at All:**

An industrial union can pick and choose the moment of pressure. However a craft union, going from job to job can only act effectively at the job and *during* the job. Until Gould & Preisner came on the job there would be no sense in picketing Doose & Lintner; the job was 100 per cent union. Later when Gould & Preisner came on the job there would be no sense in picketing Gould & Preisner at its home office, allowing it to continue non-union "business-as-usual" at Doose & Lintner's job. The only time and place for effective economic pressure was *at the job, while*

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<sup>1</sup> Had Doose & Lintner themselves brought the non-union electricians on the job there would be a clear right to picket under Sec. 8(b)(4)(A). Does this section permit an easy subterfuge by the use of a sub-contractor?

the job was being done. Such picketing accomplished a dual purpose: (1) it brought home to Doose & Lintner that doublecrossing the Building Trades' Council by bringing in cheap non-union electrical workers was a risky business; (2) it awakened Gould & Preisner to the possibility: no union, no job. Both were valid union objectives.

The Board in its Brief p. 27-29 concedes the validity of the picketing in *United Electrical Workers, etc. v. Ryan Construction Co.*, 85 NLRB 418; where the union picketed Bueyrus (the primary employer). This resulted in Ryan's employees refusing to finish a construction job for Bueyrus. Apparently the fact that the placards were directed at Bueyrus, not Ryan, was a principal factor leading to the Board's approval (Brief p. 29). In the present case, however, the Board says, the placards state "This job unfair \* \* \*." and hence the picketing is illegal. The argument is unrealistic because it ignores the fact that here the union's complaint was against both the general contractor and his sub-contractor, i.e., the union claimed the entire job was unfair. The fact that it was unfair for different reasons makes no difference: the placard obviously could not tell the entire story. Also, the job itself was objectionable to the union, no matter who was responsible. Even if we assume with the Board that Doose & Lintner were neutral, the differences between the present case and the *Ryan* case above are insignificant and the *Ryan* doctrine applies.

The Board in its Brief p. 30-35 admits the validity of on-the-job picketing provided it is restricted "to the times when the primary employer is doing business at the neu-



tral's premises<sup>1</sup> and is designed only to publicize the dispute with the primary employer." (R. 31). We submit such restrictions have no application to a case such as the present one where Doose & Lintner were certainly not neutral and where the union quarrel was with both interested employers. It may be noted that in anticipation of the picketing, Doose & Lintner on January 8 assigned their union workers to another job which proceeded without interruption and without complaint from the union. (R. 230). This negatives any pressure on Doose & Lintner *except at the job*. Also, during the entire two week period of picketing the only men at work on the Bannock Street job were Gould & Preisner's non-union electricians. (R. 231).

**D. If the Object of the Picketing was Valid, Secondary Resultants Did Not Render It Invalid:**

The Board in its Brief p. 43 admits that "an ultimate objective of the Council and its affiliates was to make the Bannock Street project wholly union." This was held by the Court below which continued "Accordingly the object was not in any literal sense to require Doose & Lintner to cease doing business with Gould & Preisner" (R. 277). The latter firm if it chose could unionize and bring the picketing to an immediate end. It did not choose to unionize, no doubt because of a profit motive; if it unionized it would have to pay union wages which would prevent it underbidding union contractors.

We think it fantastic to believe that Congress ever in-

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<sup>1</sup> The Bannock Street job was not the "neutral's premises"—the two contractors were both working on a third party's premises, to which each had equal access.

tended Sec. 8(b)(4)(A) to prevent union men from refusing to work with non-union men. It must be remembered that the non-union electricians herein worked on the job for two weeks after the picketing started. (R. 231). During this time the general contractor used the union men on another job. What the employer wanted was to force the union men to work with the non-union men side by side. This the union men refused to do. After a two weeks' tug-of-war Doose & Lintner on January 22 saw the impossibility of forcing the union men to rejoin the non-union men then on the job and so terminated Gould & Preisner's services because the latter's employees "are unable to perform services while the employees of other sub-contractors are working on the premises." (R. 231). Doose & Lintner was not compelled to cease doing business with the non-union sub-contractor; it could have allowed the non-union men to continue to work, as they had for two weeks, in spite of the picket. What Doose & Lintner could not do was to force all parties, union and non-union, to work simultaneously on the project. Termination of the non-union services was a mere recognition by Doose & Lintner of the failure of their plans.

We do not impute to Congress any such grandiose plan as an attempt to prevent union labor from choosing its workmates. Yet construed as the Board contends, Sec. 8(b)(4)(A) will have this result in the construction industry. The right of union men to quit would be sustained only where the end-result was failure. Where as here the result was an all union job the work stoppage would be regarded, retrospectively, as a violation of Sec. 8(b)(4)(A).

This gives carte blanche to a general contractor to force into a predominantly union job as many non-union sub-contractors as he may desire. The union could then picket only with the aid of a corps of detectives, on the watch for different groups of non-union men as they come and go<sup>1</sup>, followed by quick changes in the wording of the placard to single out the offending group<sup>2</sup>. The right to strike guaranteed by Sec. 13 would thus vanish as a result of Board rulings rendering its effective exercise impossible. We submit that the right to picket generally, using a placard "Unfair" should exist where the activities of the two employers are, as here, enmeshed, and when as held below (R. 280) the picketing and other action is aimed against both, inseparably. As the Court below said:

"The job was said to be 'unfair.' The contractor cannot separate itself from the conditions there so as to make the action by the Council against it secondary; nor can the sub-contractor." (R. 280.)

**E. It is Unrealistic to Argue that the General Contractor and the Sub-contractor Were Not Allies:**

The Board argues in its Brief, p. 51-63, that the two contractors herein are not "allies" and that Doose & Lintner was entirely neutral. We have answered this argu-

<sup>1</sup> This would be the result of what the Board in its Brief, p. 31-32, advocates on the basis of *International Brotherhood, etc. and Schultz Refrig. Service*, 87 NLRB 502 and *International Brotherhood and Sterling Beverages*, 90 NLRB No. 75.

<sup>2</sup> Following *Sailors' Union, etc. and Moore Dry Dock Co.*, 92 NLRB No. 93; *United Electrical, etc., Workers and Ryan Constr. Co.*, 85 NLRB 417; and *Oil Workers Int. and Pure Oil Co.*, 84 NLRB 315; See Board's Brief, pp. 37, 39.



ment in subdivision A of the present Point, p. 3. It is not necessary to the union to argue that Doose & Lintner and Gould & Preisner were allies; it is sufficient if it be shown that Doose & Lintner was not a neutral, for without a neutral there can be no secondary boycott. Certainly the two contractors had a common project: the general contractor to obtain, and the sub-contractor to furnish, cheap non-union electrical labor on an otherwise all union job. By definition this removes Doose & Lintner from the role of neutral and thus we reach an end of the matter.

## II.

### **The Board Had No Jurisdiction as the Labor Activities Herein Did Not "Affect Commerce"**

The court below did not disturb the Board's holding of jurisdiction though it said, "the decision in this regard is a close one." (R. 267.) We think the present is an extreme case and that the rule *de minimis* required its dismissal.

Proof of jurisdiction is limited to inferences as to value of out-of-state materials used by Gould & Preisner. Their total charge for their electrical work was to be \$2,300 (R. 218). There was no proof of how much of this represented materials. From October 21, 1947 when they started (R. 227-8) up to the termination of their services after two weeks steady work in January, 1948, the total value of the materials used was \$348.55 (R. 218). The Board in its Brief (p. 6, footnote 2) admits "the record does not disclose what percentage, if any, of these materials come from out-of-state sources."

Gould and Preisner's total out-of-state purchases for the year 1947 amounted to \$55,745.25 (R. 216). No evidence was adduced that any of the material actually used, or to be used, in the Bannock Street job came from outside of the state (R. 267). It was simply assumed that as 65 per cent of all the company's purchases came from out of the state it followed that 65 per cent of these out-of-state purchases would be used on the Bannock Street job. Thus by inference based upon inference \$226.56 of out-of-state materials would theoretically be used or usable on the Bannock Street job (R. 216, 267, 269, footnote 2).

The court below held that the interstate commerce relied on to show jurisdiction ended at Gould and Preisner's warehouse and hence this material was no longer in interstate commerce (R. 269, 216, 219).

Conceding that under *NLRB v. Fainblatt*, 306 U. S. 601, 607, no particular volume of commerce is required still there should be enough involved to take the case out of the rule of *de minimis*.

Since the decision in *Matter of Local 74, United Brotherhood of Carpenters, et al*, 80 NLRB No. 91 (the Watson Case), the Board has steadily restricted its cases to those involving substantial amounts where indirect effect on commerce is the source of jurisdiction. See *Petredis and Fryer*, 85 NLRB 241, (construction project of \$80,000 too low); *Makins Sand and Gravel Co.*, 85 NLRB 213, (\$72,000 of out-of-state materials too low); *Brewer and Brewer Sons, Inc.*, 85 NLRB 387 (\$50,000 of out-of-state raw materials too low; \$100,000 worth of trucks purchased within the

state but originating out of the state, too low); *Matter of Carpenter and Skaer* 90 NLRB 78 (\$81,000 out-of-state purchases too low, total business \$685,000 too low).

The Board in its release dated October 6, 1950 has stated that where it is the sole basis of jurisdiction a *direct* inflow of out-of-state materials valued at \$500,000 or more is required. Where it is *indirect* an inflow valued at \$1,000,000 or more a year is required.

The Board's policy is not its free expression of preference but, we submit, constitutes a construction of the Act. In effect to avoid stretching the coverage of the Act beyond reasonable objectives, the Board has undertaken to say that certain minimum figures must be present where interstate commerce is not directly involved. Yet, in spite of the above the Board continues to seek an enforcement order in the present case. The Board does so when if the case were presently pending before the Board it would, by its own present policy, be compelled to dismiss it.

The court below eked out jurisdiction not on the basis of the showing as to Bannock Street but by pointing to the Lo Sasso project; another controversy affecting Gould and Preisner, where the Board held no violation was involved. On this basis, the court below held the record showed a recurrent problem (R. 269). However, even such a recurring problem would not bring the present case within the Board's recent criteria.

We feel that this Court's solicitude for the reserved powers of the States shown in such cases as *Polish National Alliance v. NLRB*, 322 U. S. 643, requires serious consid-



eration of the present point. At least, we think the court should be fully advised of the extreme length to which the Board would commit this Court as to the extent of the commerce clause in the Act.

### III.

#### **The District Court's Decision Herein that Interstate Commerce Was Not Involved Was Res Judicata As to Jurisdiction**

Prior to the proceedings before the Examiner the Board applied to the United States District Court for Colorado for injunctive relief under Sec. 10 (1) of the Act. The injunction suit was not tried out on affidavits; the Board produced witnesses who testified in open court and the facts were fully developed. (R. 215-216, 218, 257-258, 270-271.) The Court found the activities were "purely local" and did not affect interstate commerce and dismissed the complaint. (R. 215; *Sperry v. Denver Bldg. Trades, etc.*, 77 F. Supp. 321. Finding 4; Conclusions of Law 1 and 2, R. 209-210.) The Board took an appeal but later dismissed it. (R. 271.) Respondents thereupon pleaded *res judicata* before the Examiner, the Board and the Court below claiming that the Board was bound as to this crucial jurisdictional fact by the decision it had itself induced.

The Court below (one judge dissenting) rejected the defense on the basis of the scheme of the Act, which contemplated; it held, two remedies, one by interim injunctive relief, the other after final action by the Board or the Courts. (R. 271.) The Board in its Brief, p. 3, footnote,

takes the same position here; that the Court in the injunction proceedings is not called on to decide whether unfair labor practices affecting commerce were committed, but only whether there was reasonable cause to believe they had. The ultimate determination, the Board claims, is left to the Board in proceedings taken under Sec. 10 (b) and (c).

We think Congress intended the Board to have the two remedies *only in the event interstate commerce was involved*. Where the Board has sought a ruling and obtained a District Court decision that the affair is "purely local," that should be the end of the matter. Congress intended the Act to be enforced not outside, but inside, the general law of the land, and the latter includes the doctrine of *res judicata*. There is no showing that application of the doctrine would be inconsistent with the method devised by Congress, as held below. It is significant that the Court below held against the application of the doctrine on the ground of Congressional intent only and not, as it says "because of lack of any of the elements which usually make out a case for the application of *res judicata* (Opinion below, R. 272).

Jurisdictional rulings made on motions are just as final, for the purposes of *res judicata*, as any other Court decision. (*Baldwin v. Iowa State Traveling Men's Assn.*, 283 U. S. 522, 526-7; *American Surety Co. v. Baldwin*, 287 U. S. 156, 166; *Treinius v. Sunshine Mining Co.*, 308 U. S. 66, 78; cf. *Chicago Rock Island, etc., R. Co. v. Schendel*, 270 U. S. 611.) The rule applies to a decision denying jurisdiction as well as to those sustaining it. (*Ripperger v. Allyn Co.*, 113 F. (2) 332, 333.) The vice of disregarding the District

Court's ruling is illustrated in the present case. After years of court proceedings, it turns out now that interstate commerce is only affected to the extent of 65 per cent of \$348.55 worth of materials *supposed* to have been, but not proved to have been purchased outside the State, and supposed to have been, but not proved to have been used in the building. (R. 216-218; opinion of court below R. 269, footnote 2.) In fact, by present Board standards the case lacks exactly \$444,254.75 of involving the requisite jurisdictional amount.

### CONCLUSION

For the foregoing reasons, we respectfully submit that the judgment below was correct and should be affirmed.

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